

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.03.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

Tr.C.M.P.No.64 of 2016
and C.M.P.No.1231 of 2016

R.Subha Priya

... Petitioner

Vs

J.Yuvaraj

... Respondent

Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C. to withdraw and transfer of O.P.No.4195 of 2015 on the file of the Principal Family Court, Chennai to Sub Court, Nagercoil.

For Petitioner : Mr.J.Kamaraj
For Respondent : Mr.G.Padmanabhan

O R D E R

The wife is the petitioner and the husband is the respondent in the transfer Civil Miscellaneous Petition. The husband filed O.P.No.4195 of 2015 on the file of the Family Court, Chennai which is now pending on the file of the Principal Judge, Family Court, Chennai, under Section 13[1][i-a] of the Hindu Marriage Act, 1955 for a decree of divorce dissolving the marriage between them. The wife has now come forward with the present petition for transferring the said O.P. to the file of the Sub Court, Nagercoil within whose jurisdiction she resides. The respondent has filed a counter which contains averments pertaining to the merits of the O.P.

2. The arguments advanced by Mr.J.Kamaraj, learned counsel for the petitioner and by Mr.G.Padmanabhan, learned counsel for the respondent are heard. Materials available are also perused.

3. Admittedly, the parties are Hindus and their marriage was solemnised in accordance with the provisions of the Hindu Marriage Act, 1955. The O.P. for dissolution of marriage by a decree of divorce also came to be filed under Section 13[1][i-a] of the Hindu Marriage Act, 1955. Section 19[iii-a] of the

Hindu Marriage Act, 1955 has been included in the statute to protect the interest of the wife so far as the selection of jurisdiction is concerned. Though the husband's petition can be filed in the Courts having jurisdiction over the place of marriage, place wherein the respondent/wife resides or where both the husband and wife last resided together, sub clause [iii-a] enables the wife to file the petition in the Court having jurisdiction over the place in which she resides. Such a concession is not available to the husband, namely, to file a suit [OP] in a Court having jurisdiction over the place in which he resides.

4. The said provision has to be interpreted in a way beneficial to the wife. The legislature clearly intended to benefit the wife and such a benefit conferred on the wife cannot be lightly denied, unless there shall be lack of bonafide in seeking transfer of the case. In fact, the Supreme Court way back in 2001 held that matrimonial proceedings filed by the husband can be sought to be transferred to the court having jurisdiction over the place wherein the wife is living on the ground of convenience.

5. In Sumita Singh vs. Kumar Sanjay and Another reported in AIR 2002 SC 396, the Hon'ble Supreme Court held that a wife living at Delhi could seek the transfer of the the matrimonial proceedings initiated by her husband in Ara, which is about 1100 Kms from Delhi to a court in Delhi on the ground of inability to travel the said distance as she was residing with her parents at Gurgaon.

6. Similar is the view expressed by the Supreme Court in Vinitha Jitesh Tolani @ Manmeet Laghmani vs. Jitesh Kishore Tolani reported in 2010 (6) Bom. C.R.145, where the Supreme Court transferred husband's petition from the Court of Civil Judge at Goa to the Family Court at Delhi and dismissed the petition filed by the husband seeking the transfer of the wife's petition filed against the husband.

7. A Division Bench of this court in R.Sridharan vs. Presiding Officer, Principal Family Court, Chennai and R.Sukanya reported in (2010) 4 CTC 822 interpreting Section 19(iii-a) of the Hindu Marriage Act, 1955 to be a benevolent provision intending to confer benefit on the wife in respect of the choice of jurisdiction, chose to make an observation that such a provision meant for the benefit of women of our country should be given a meaningful interpretation by the court. The relevant paragraph is extracted hereunder:

"22. While considering a provision like section 19 (iii-a) of the Hindu Marriage Act, the objects and reasons which prompted the parliament to incorporate such a provision has also to be taken note of. Sub

clause (iii-a) was inserted in Section 19 with a specific purpose. Experience is the best teacher. The Government found the difficulties faced by women in the matter of initiation of matrimonial proceedings. The report submitted by the Law Commission as well as National Commission for Women, underlying the need for such amendment so as to enable the women to approach the nearest jurisdictional court to redress their matrimonial grievances, were also taken note of by the Government. Therefore such a beneficial provision meant for the women of our Country should be given a meaningful interpretation by Courts."

If a meaningful interpretation to the said provision (Section 19 (iii-a) of the Hindu Marriage Act, 1955) is made, then the plea of the wife for transferring the matrimonial proceedings instituted against her by her husband in a court within whose jurisdiction her place of residence does not come, to a court having jurisdiction over her place of residence has to be construed as an attempt to avail the benefit sought to be given in the said provision.

8. The above said observation shall not apply in cases of lack of bonafide on the part of the wife in seeking such transfer, for example, wife shifting her residence after receiving summons in the matrimonial proceedings with a view to seek transfer of the proceedings to the other court.

9. In the present case, the address of the petitioner (wife) in the transfer Civil Miscellaneous Petition, has been furnished as "No.56, Upstairs, Vellalar Middle Street, Near Amman Kovil, Ozhuginashery, Nagercoil-629 001". The said address has been provided in the O.P. filed by the husband itself. If at all, the husband wanted not to harass the wife by making her to come over to Chennai from Nagercoil to defend the case, he could have very well filed the O.P. in the Court having jurisdiction over the place in which the wife is residing, namely, the Sub Court, Nagercoil. As he has not done so, the petitioner has been forced to approach this Court with the present petition seeking such a transfer. This Court does not find any lack of bonafide or malafide in the prayer made by the petitioner seeking transfer of the O.P.No.4195 of 2015 from the file of the Principal Judge, Family Court, Chennai to the file of the Sub Court, Nagercoil.

In the result, the petition is allowed and the O.P.No.4195 of 2015 pending on the file of the Principal Judge, Family

Court, Chennai is withdrawn from the file of the Family Court, Chennai and transferred to the file of the Sub Court, Nagercoil. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Judge,
Family Court, Chennai.

2.The Sub Judge,
Nagercoil.

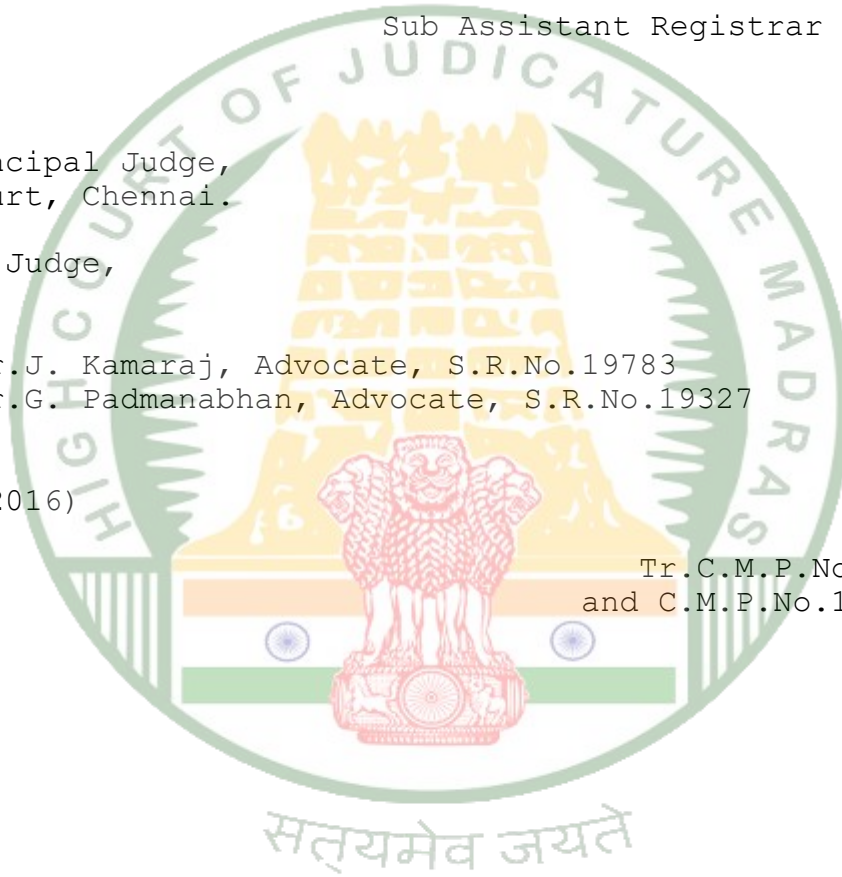
+1cc to Mr.J. Kamaraj, Advocate, S.R.No.19783

+1cc to Mr.G. Padmanabhan, Advocate, S.R.No.19327

TEJ(CO)

EU(18/04/2016)

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