

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 15.04.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

Tr.C.M.P.No.68 of 2016

&

C.M.P.No.1325 of 2016

S.Subha

... Petitioner

vs.

G.V.Saravanan

...Respondent

Transfer Civil Miscellaneous Petition filed under Section 24 of the Code of Civil Procedure to withdraw H.M.O.P.No.26 of 2014 pending on the file of Sub-Court, Gudiyattam and transfer the same to Sub-Court, Tambaram.

For Petitioner : Mr.J.Kalidas
for Tri Law Office

For Respondent : Mr.K.Venkateswamy

O R D E R

Sole Respondent has entered appearance through counsel and filed a counter. The arguments advanced on both sides are heard.

2. The respondent filed H.M.O.P.No.26 of 2014 on the file of the Sub-Court Gudiyattam for divorce against the petitioner herein. The petitioner, after receiving summons in the said H.M.O.P, entered appearance there. Thereafter, she also filed a criminal case under the Domestic Violence Act in the Court of Judicial Magistrate, Gudiyattam. Subsequently, she has come forward with the present petition seeking transfer of the H.M.O.P filed by the respondent/husband from Sub-Court, Gudiyattam to Sub-Court, Tambaram. The petitioner has made an attempt to project the petition for transfer to be one seeking transfer of the case to a forum, which does have the jurisdiction over the place she is residing.

3. Of course, Section 19(iii-a) of the Hindu Marriage Act is intended to confer a benefit on the wife by providing the Court having jurisdiction over the place wherein the wife resides also as a jurisdictional Court. But, such a

benevolent provision cannot be allowed to be misused by an unscrupulous wife by changing her residence after the filing of the case with a view to drag the husband to a place inconvenient to him. Admittedly, the residential address of the petitioner in the Transfer Civil Miscellaneous Petition is No.117A, Vivekanandar Street, Vinayagapuram, Gudiyattam Taluk, Vellore District. It is in the said address she was served with the summons in the H.M.O.P filed by the husband. It is also not in dispute that she preferred a complaint under the Domestic Violence Act showing the said address as her place of residence. However, in the Transfer Civil Miscellaneous Petition, she has chosen to contend that she is now temporarily residing at Plot No.29, Ground Floor, JV Nagar, Anna Nagar 9th Street, Madipakkam, Chennai - 600 091. In addition to the fact that she was very much residing within the jurisdiction of the Gudiyattam Sub-Court at the time of service of summons, there is no proof that the petitioner is residing in the above said Madipakkam address. The petitioner has chosen to produce a rental agreement (unregistered) under which the petitioner's brother is said to have become a tenant in respect of the property, which is shown as the present residential address of the petitioner. The said document seems to have been created for the purpose of this petition, which is apparent from a reading of the same in comparison with the address found in the petition for transfer.

4. Temporary address of the petitioner furnished in the Transfer Civil Miscellaneous Petition is " Plot No.29, Ground Floor, JV Nagar, Anna Nagar 9th Street, Madipakkam, Chennai - 600 091". But the property regarding which the brother of the petitioner is said to have become a tenant is described in the rental agreement dated 15.05.2013, a xerox copy of which has been included in the typed-set, as follows:

"Plot No.21, Kalaimagal Street, Puzhuthivakkam, Chennai - 600 091 in the first floor having plinth area of 850 sq.ft. "

5. A comparison of the two addresses will make it clear that this document has been prepared only for the purpose of filing the present petition. In addition, the date of the rental agreement in the index column has been furnished as 15.05.2014, whereas the document is dated 15.05.2013. All these aspects will go to show that the petitioner wants to harass the respondent by dragging him to a place which shall be inconvenient to him. There is no bonafide in the petition. As stated supra, a benevolent provision should not be allowed to be used as a weapon of oppression. The lack of bonafide will be enough to negative the prayer made by the petitioner.

The Transfer Civil Miscellaneous petition fails and

the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

gpa

To

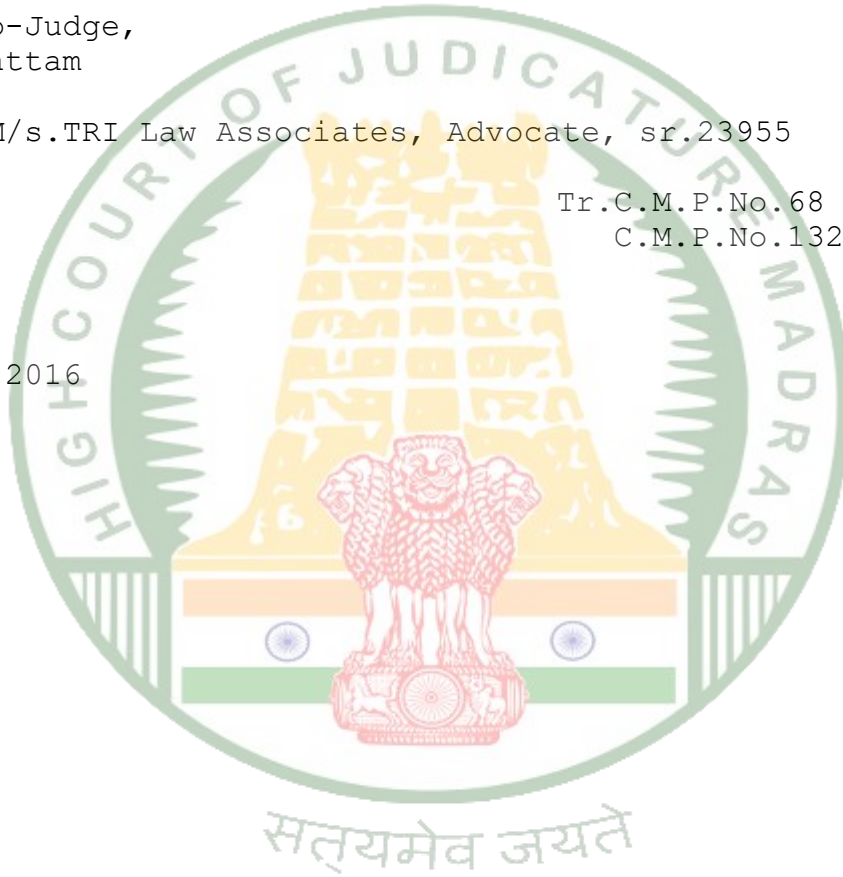
1. The Sub-Judge,
Gudiyattam

+1 cc to M/s.TRI Law Associates, Advocate, sr.23955

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