

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

Tr.C.M.P.No.77 of 2016

and

C.M.P.No.1746 of 2016

R.Poongodi

... Petitioner

Vs

M.Seetha Raman

... Respondent

Transfer Civil Miscellaneous Revision Petition filed under Section 24 of the Civil Procedure Code to withdraw and transfer the divorce petition in H.M.O.P.No.88 of 2015 pending on the file of the learned Sub Court, Cheyyar, Thiruvannamalai District to the learned Sub Court, Ranipet, Vellore District.

For Petitioner : Mr.E.Kannadasan

For Respondent : Mr.V.S.Usharani

O R D E R

The respondent has entered appearance through counsel. The submissions made by Mr.E.Kannadasan, learned counsel for the petitioner and Ms.V.S.Usharani, learned counsel for the respondent are heard.

2. The wife is the petitioner and the husband is the respondent in the Transfer Civil Miscellaneous Petition. Their marriage took place on 08.06.2014 at Cheyyar Town, the place of residence of the respondent herein / husband. The petitioner herein / wife is residing at Rathnagiri, Walajapet Taluk, Vellore. The respondent / husband chose to file H.M.O.P.No.88 of 2015 before the Sub Court, Cheyyar for divorce under Section 13 of the Hindu Marriage Act, 1955 on the ground of non consummation of marriage due to unsoundness of mind of the petitioner herein / wife. Since the petitioner herein / wife has been sued for divorce in a Court not having jurisdiction over the place in which she is residing, claiming benefit of Section 19 (iii-a) of the said Act, the petitioner / wife has come forward with the present transfer Civil Miscellaneous Petition seeking transfer of the above said H.M.O.P from the Sub Court, Cheyyar to the Sub Court, Ranipet within whose jurisdiction she resides.

3. The respondent / husband raises an objection for such a transfer not on the ground of convenience, but on the ground that the marriage was not consummated owing to the mental unsoundness of the petitioner / wife and she deserted the husband. The said objection pertains to the merits of the H.M.O.P. A transfer sought on the ground of convenience of the wife to the Court within whose jurisdiction she resides in an attempt to avail the benefit of the benevolent provision under Section 19 (iii-a) of the said Act, cannot be easily prevented by raising objection on the merits of the main case. It is pertinent to note that H.M.O.P itself seems to have been filed on a misconception of law or with a view to drag the petitioner / wife to a place which shall be inconvenient to her. The Marriage took place on 08.06.2014. H.M.O.P came to be signed on 14.08.2014 and it came to be numbered in 2015. In this regard, attention may be drawn to Section 14 of the Hindu Marriage Act. It is doubtful as to whether any application seeking the leave of the Court to present a divorce O.P before the expiry of one year from the date of marriage as contemplated under Sub Clause (2) of Section 14 of the Hindu Marriage Act was filed and whether such leave was obtained. The learned counsel for the respondent is not in a position to ascertain that any such leave was applied for and obtained. This Court does not make an attempt to give a finding as to the maintainability of the petition for not getting such a leave from the Court below, but the said fact has been cited to show that the filing of the petition for divorce in Sub Court, Cheyyar, may not be bona fide, as it may be with an intent to drag the wife to Cheyyar, which is a place inconvenient for the wife, who is the petitioner in the transfer Civil Miscellaneous Petition. Hence, this Court deems it appropriate to hold that it is one of the fittest cases in which the Court can exercise the power of transferring the case to the Court having jurisdiction over the place wherein the wife resides.

4. Accordingly, the Transfer Revision Petition is allowed. H.M.O.P.No.88 of 2015 pending on the file of the Sub Court, Cheyyar is withdrawn and transferred to the file of Sub Court, Ranipet for disposal according to law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

srn

To

1. The Subordinate Judge,
Cheyyar , Thiruvannamalai District

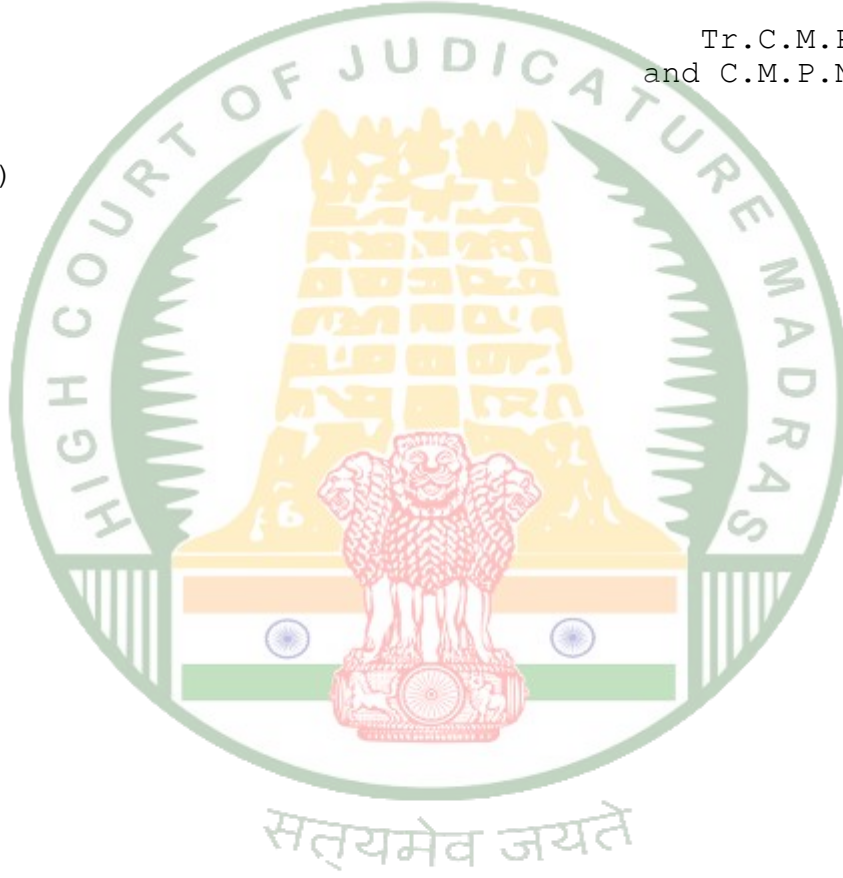
2. The Subordinate Judge,
Ranipet, Vellore District.

1 cc to Mr.E. Kannadasan, Advocate, Sr. 17954

1 cc to Ms.V.S. Usha Rani, Advocate, Sr. 17799

Tr.C.M.P.No.77 of 2016
and C.M.P.No.1746 of 2016

KGK (CO)
kk 5/4



WEB COPY