

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.03.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

Tr.C.M.P.No.83 of 2016

and C.M.P.No.1925 of 2016

M.Subaashini

... Petitioner

Vs.

1.B.Jayakumar
2.Ashirvadham

.... Respondents

Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C. to withdraw and transfer the H.M.O.P.No.504 of 2015 on the file of the Subordinate Judge at Poonamallee to the file of the I Additional Family Court, Chennai for disposal along with O.P.No.4817 of 2015.

For Petitioner : Mr.J.Saravana Vel
For 1st Respondent : Mr.J.Venkatachalam
for M/s.Thiru Associates

O R D E R

Learned counsel for the 1st respondent submits that, the petition may be disposed of on merits without insisting upon filing a formal counter and considering the objection to be raised orally by the 1st respondent. Accordingly, the arguments advanced by Mr.J.Saravana Vel, learned counsel for the petitioner and by Mr.J.Venkatachalam, learned counsel for the 1st respondent are heard. Materials placed before this Court by both the parties are also perused and taken into consideration.

2. This petition has been filed under Section 24 of C.P.C. for the transfer of H.M.O.P.No.504 of 2015 pending on the file of the Subordinate Judge, Poonamallee to the file of the I Additional Family Court at Chennai for being tried jointly with O.P.No.4817 of 2015. The said H.M.O.P.No.504 of 2015 was filed by the 1st respondent herein for restitution of conjugal rights, whereas the other Original Petition before the I Additional Judge, Family Court, Chennai was filed by the petitioner herein

for dissolution of marriage. The 1st respondent has entered appearance through counsel and the learned counsel for the 1st respondent strongly opposes the petition filed for transfer of the case pending before the Subordinate Judge, Poonamallee.

3. On the other hand, the learned counsel for the 1st respondent submits that, since both the parties are residing within the jurisdiction of the Sub Court, Poonamallee, the Original Petition filed by the petitioner before the I Additional Family Court, Chennai can be transferred to the file of the Subordinate Judge, Poonamallee for being jointly tried with H.M.O.P.No.504 of 2015. The learned counsel for the petitioner is not ready to concede the said suggestion made by the learned counsel for the 1st respondent.

4. Admittedly both the petitioner and the 1st respondent are Hindus and their marriage was solemnized in accordance with the provisions of the Hindu Marriage Act, 1955. It is also an admitted fact that the petitioner and the 1st respondent are residing within the jurisdiction of the Sub Court, Poonamallee. The petitioner will have to undertake travel from Avadi to Parrys, which will take double the time needed for travelling from Avadi to Poonamallee. Still for the reasons best known to the petitioner, the petitioner is not prepared to go to the Sub Court, Poonamallee to contest the case filed by her husband and on the other hand, she has chosen to prefer the jurisdiction of the Family Court at Chennai, solely on the ground that the choultry in which, the marriage took place comes within the territorial jurisdiction of the Family Court at Chennai.

5. When the petitioner seeks an order of transfer, transferring the H.M.O.P. filed by her husband on the ground of convenience, she must be in a position to show that the Court in which, the case is now pending is a place which shall be more inconvenient for her than the Court, to which she seeks transfer of the case. As pointed out supra, the Sub Court, Poonamallee is nearer to Avadi, where the petitioner resides and the time that will be taken to come to Parrys from Avadi will be double the time required for commuting to Poonamallee, even in a public transport system.

6. From the above particulars, it will be obvious that the petitioner is bent upon dragging the 1st respondent to the place of her choice, though such place of her choice is inconvenient not only to the 1st respondent, but also to the petitioner. This Court does not find any bonafide in the petition. Hence, holding that there is lack of bonafide in

filing this petition, this Court dismisses the transfer Civil Miscellaneous Petition. No costs. Consequently, the connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

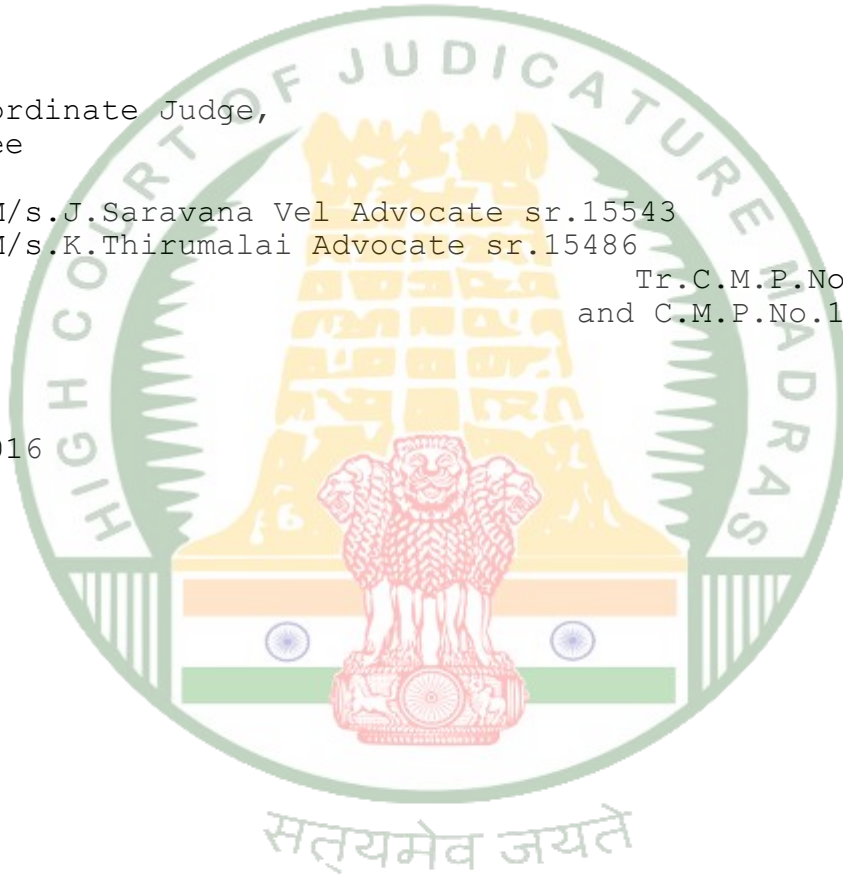
1.The Subordinate Judge,
Poonamallee

+1 cc to M/s.J.Saravana Vel Advocate sr.15543

+1 cc to M/s.K.Thirumalai Advocate sr.15486

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