



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.04.2016

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Tr.C.M.P(MD)No.113 of 2016 and
C.M.P(MD)No.1973 of 2016

A.Sivakala ... Petitioner/Respondent
Vs.

S.Iyyappan ... Respondent/Petitioner

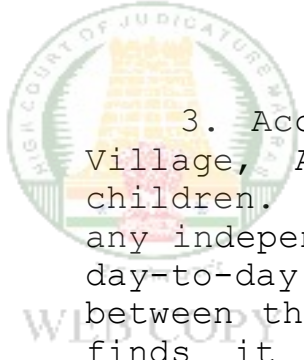
Transfer Civil Miscellaneous Petition is filed under Section 24 of Civil Procedure Code to withdraw the case in H.M.O.P.No.118 of 2015 pending before the Sub Court, Virudhunagar and transfer the same to the file of Principal Sub-Court, Nagercoil.

For Petitioner : Mr.R.Murugan
For Respondent : Mr.S.J.Chakkaravarthy

ORDER

The Transfer Civil Miscellaneous Petition is filed to withdraw H.M.O.P.No.118 of 2015, on the file of the Sub Court, Virudhunagar and transfer the same to the file of Principal Sub Court, Nagercoil.

2.The petitioner herein is the wife and the respondent is the husband. The marriage between the petitioner and the respondent was solemnized on 15.04.1998. After the marriage, both were living together in the matrimonial home at R.S.S.Nagar, Virudhunagar. Two children were born in the wedlock on 10.11.1999 and 04.02.2005. The respondent is working in Military service at Ambala, Haryana State. The petitioner was residing at Virudhunagar with the parents of the respondent till 2000. After that, the petitioner was residing at Ambala for 11 years. In the year 2013, the respondent left the petitioner and her children at her parents house. Subsequently, he did not maintain the petitioner and her children. Therefore, the petitioner filed suit in O.S.No.118 of 2015, on the file of the Principal Sub Court, Nagercoil against the respondent claiming maintenance. While so, the respondent filed H.M.O.P.No.118 of 2016 before the Sub Court, Virudhunagar for Restitution of Conjugal Rights. The petitioner also filed a petition in Crl.M.P.No.30 of 2016, on the file of the Judicial Magistrate No.2, Nagercoil, under the Domestic Violence Act, 2005, against the respondent.



3. According to the petitioner, she is residing at Vadaseri Village, Agasteeswaram Taluk with her parents along with her children. Children were studying at Nagercoil. She is not having any independent income and she is depending on her parents for her day-to-day expenses including travel expenses. The distance between the Nagercoil and Virudhunagar is more than 190 kms. She finds it very difficult to travel from Vadaseri Village to Virudhunagar along with her children without help of others. She has also stated that it will not be difficult for the respondent/husband to attend the hearing at Nagercoil.

4. In such circumstances, the petitioner filed this petition to transfer the aforesaid HMOP No.118 of 2015, filed by the respondent, husband, before the Sub Court, Virudhunagar, to Principal Sub Court, Nagercoil.

5. Heard the learned counsel appearing for the petitioner and the respondent.

6. It is well settled law that whenever, the transfer application is filed in matrimonial disputes, the convenience of the wife shall be given preference, as held by the Hon'ble Supreme Court in the Judgments reported in **2008(9) SCC 353 (Arti Rani @ Pinki Devi and another Vs. Dharmendra Kumar Gupta)** and **AIR 2002 SC 396 (Sumita Singh Vs. Kumar Sanjay and another)**. Therefore, I am of the view that the petition filed by the wife is liable to be allowed.

7. Accordingly, this Transfer Civil Miscellaneous Petition is allowed and H.M.O.P.No.118 of 2015, on the file of the Sub Court, Virudhunagar, is hereby withdrawn and transferred to the file of the Principal Sub Court, Nagercoil. The learned Sub Judge, Virudhunagar, is directed to send the case bundles to the Principal Sub Court, Nagercoil, immediately. The Registry is also directed to send back the papers that are pending before the Registry. No costs. Consequently, C.M.P(MD)No.1973 of 2016 is closed.

Sd/-
Assistant Registrar(T&P)

/True copy/

Sub Assistant Registrar

To
1. The Subordinate Judge,
Virudhunagar.



2.The Principal Subordinate Judge,
Nagercoil.

3.The Section Officer,
VR Section,
Madurai Bench of Madras High court, Madurai

+1cc to Mr.S.J.Chakkaravarthy, Advocate SR.No.20745

+1cc to Mr.R.Murugan, Advocate SR.No.20069

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Tr.C.M.P (MD) No.113 of 2016