



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.11.2016

Coram:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

Tr.C.M.P. (MD) .No.220 of 2016
and C.M.P. (MD) No.4152 of 2016

V.Uma Devi

.. Petitioner/Respondent -Wife

Vs.

S.Easwaran

.. Respondent/Petitioner-Husband

PRAYER: Transfer Civil Miscellaneous Petition filed under Section 24 of the Code of Civil Procedure, praying to withdraw the case in H.M.O.P.No.44 of 2016 on the file of the learned Sub Judge, Theni and transfer the same to the file of the learned Sub Court, Thirumangalam.

For Petitioner : Mr.K.K.Kannan
For Respondent : Mr.K.Vijayapandi

O R D E R

The present Transfer petition is filed seeking transfer of H.M.O.P.No.44 of 2016 from the Sub Court, Theni to the Sub Court, Thirumangalam.

2. The respective counsels for both parties are heard.

3. The marriage between the petitioner and the respondent was solemnized on 23.02.2015 as per Hindu rights and customs. Out of the wedlock, a female child born on 24.11.2015.

4. The contention of the petitioner is that the respondent has caused mental torture and harassment to the petitioner and she was forced to leave the matrimonial home and now she is residing in the parents house along with four months old child. The petitioner states that she is unemployed and not having any independent sources of income and she is not in a position to defend the case filed by the respondent in H.M.O.P.No.44 of 2016 before the Subcourt, Theni for divorce. The respondent is residing at Chennai and therefore, it will not cause any prejudice to the respondent if the case is transferred to the Sub Court at Thirumangalam since the respondent has to travel either to Theni or Thirumangalam.

5. The learned counsel for the respondent opposed the petition by stating that the case may be transferred to Madurai instead of Thirumangalam since the respondent is working in Chennai.

6. The said contention was objected by the learned counsel for the petitioner by stating that the petitioner is residing in Thirumangalam and she is having 4 months old child and it will be difficult to travel and no purpose would be reached to transfer the case to Madurai since the respondent has to come from Chennai to attend the court.

7. The principles regarding transfer petitions, more specifically in the matters of matrimonial cases are well settled

through the decisions of the High Court of Madras, in the following cases:-

(i) The Hon'ble Division Bench of the High Court of Madras in W.A.No.1181 of 2009, dated 09.07.2010 has held as follows:-

'21. The domicile or citizenship of the opposite party is immaterial in a case like this. In case the marriage was solemnized under Hindu Law marital relationship is governed by the provisions of the Hindu Marriage Act. Therefore, Section 19 has to be given a purposeful interpretation. It is the residence of the wife, which determines the question of jurisdiction, in case the proceeding was initiated at the instance of the wife.

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.'

(ii) In yet another case in TR.CMP.Nos.138 and 139 of 2006, dated 30.08.2006, the High Court of Madras has considered the following judgments:-

'16. In AIR 2000 SC 3512 (1) (Mona Aresh Goel vs. Aresh Satya Goel), when the wife pleaded that she was unable to bear the traveling expenses and even to travel alone and stay at Bombay, the Supreme Court ordered transfer of proceedings.

In 2000 (10) SCC 304, the Honourable Supreme Court has held that where the petitioner's wife has pleaded lack of money, the same has to be considered.

In 2000 (9) SCC 355, the wife has filed a petition to transfer the proceedings initiated by the husband for divorce, at Bombay. The place of residence of the wife was at Jaipur, Rajasthan. In that case, the petitioner is having a small child and that she pleaded difficulty in going all the way from Jaipur to Bombay to contest the proceedings from time to time. Considering the distance and the difficulties faced by the wife, the Supreme Court has allowed the transfer petition.

In a decision reported in 2005 (12) SCC 395, the wife has for transfer of matrimonial proceedings and a divorce petition has been filed by the respondent's husband at Baikunthpur to be transferred to Allahabad, where the petitioner's wife was residing, on the ground that it would be difficult for her to undertake such long distance



journey, particularly in circumstances, in which she finds that the proceedings under Section 125 Cr.P.C. was already pending before the Family Court, Allahabad. Considering the difficulties faced by the wife and also the long distance journey, the Honourable Supreme Court was pleased to order transfer of the proceedings to Allahabad.

(iii) In a decision made in TR.CMP(MD) No.108 of 2010, dated 03.03.2011, the Madurai Bench of Madras High Court, has observed as below:-

'18. It is true that section 19 of the Hindu Marriage Act, has been amended by insertion of proviso of (iii)(a) to section 19. Of Course, this amended section 19(iii)(a) gives special preference to the wife to file a petition or defending the case of the husband before the Court within whose jurisdiction she resides. The intention of the legislator is to safe-guard the interest and rights of the women, who are being subjected to harassment and cruelty. But this special preference conferred under section 19(iii)(a) of the Hindu Marriage Act shall not be used to wreck vengeance on the husband. There must be a justifiable cause to select the jurisdiction of the Court where she resides.'

8. In view of the above judgments, the place of the wife is preferable and in the present case, the circumstances narrated by the petitioner deserve consideration.

9. In the result, this petition is allowed with the following directions:

i. The learned Subordinate Judge, Theni is directed to transmit the records in respect of H.M.O.P.NO.44 of 2016 to the Sub Court, Tirumangalam, within a period of two weeks from the date of receipt of copy of this order.

ii. The learned Subordinate Judge, Thirumangalam, is directed to dispose of H.M.O.P. No. 44 of 2016 as expeditiously as possible.

No costs. Consequently, connected C.M.P.(MD) No.4152 of 2016 is closed.

Sd/-

Assistant Registrar (CSII)

/True Copy/

Sub-Assistant Registrar

To

1. The Judge, Subordinate Court, Theni.

2. The Judge, Subordinate Court, Thirumangalam

+One cc to Mr. K.K. Kannan, Advocate, SR.No.66857

CM

<https://hcservices.courtsofmadras.org/CaseDetails/11.2016>

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