



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.11.2016

Coram:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Tr.C.M.P. (MD) .No.231 of 2016
and C.M.P. (MD) No.4556 of 2016

A.Rekha .. Petitioner/Respondent

Vs.

S.Ananth .. Respondent/Petitioner

PRAYER: Transfer Civil Miscellaneous Petition filed under Section 24 of the Code of Civil Procedure, to transfer HMOP NO.24 of 2016 on the file of the Subordinate Judge, Poonamallee to the II Additional Subordinate Judge, Nagercoil, Kanyakumari District and conduct the joint trial along with HMOP No.144 of 2015 on the file of the II Additional Subordinate Judge, Nagercoil, Kanyakumari District, which is filed by the petitioner.

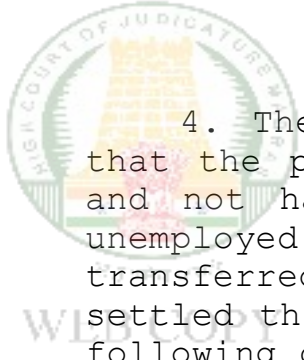
For Petitioner : Mr.S.Xavier Rajini
For Respondent : No appearance

O R D E R

This Transfer Civil Miscellaneous Petition is filed for transfer of H.M.O.P.No.24 of 2016 from the file of the Sub Court, Poonamallee, to the file of the II Additional Subordinate Court, Nagercoil, Kanyakumari District.

2. The marriage between the petitioner and the respondent was solemnized on 01.05.2014 as per the Hindu Rites and Customs at Nagercoil. The contention of the petitioner is that due to strained relationship between the parties, they are living separately. Now, the petitioner is residing with her parents at Nagercoil and she is unemployed. Hence, she will not be in a position to travel to defend the case filed by the respondent for divorce in HMOP No.24 of 2016 on the file of Subordinate Judge, Poonamalle. The petitioner also filed HMOP No.144 of 2015 before the II Additional Subordinate Court, Nagercoil, Kanyakumari District seeking dissolution of marriage.

3. Notice issued to the respondent was returned as "unclaimed" and further the respondent has not appeared either in person or by counsel and therefore, the petition is taken up for final hearing.



4. The reasons set out in the present transfer petition is that the petitioner/wife is living with her parents at Nagercoil and not having any independent source of income, since she is unemployed. The cases relating to the matrimonial issues are to be transferred in the place of residence of wife and it is 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 ~~at Jaipur, Rajasthan~~ 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.

WEB COPY In a decision reported in 2005 (12) SCC 395, the wife has sought 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.'

5. 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.

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

i. The learned Subordinate Judge, Poonamallee, is directed to transmit the records in respect of H.M.O.P.No. 24 of 2016 to the file of II Additional Subordinate Judge, Nagercoil, Kanyakumari District, forthwith

ii. The learned II Additional Subordinate Judge, Nagercoil, Kanyakumari District is directed to try H.M.O.P.No 24 of 2016 along with H.M.O.P.No.144 of 2015

<https://hcservices.eamtc.gov.in/hcservices> of the same as expeditiously as possible.



No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/
Assistant Registrar(Crl.Side)

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Sub Assistant Registrar.

To

- 1.The Subordinate Judge, Poonamallee.
2. The II Additional Subordinate Judge, Nagercoil,
Kanyakumari District.

+1CC to M/S.Xavier Rajini, Advocate, SR.No. 68902

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and C.M.P.(MD) No.4556 of 2016
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