



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **25.10.2016**

CORAM:

THE HONOURABLE Mr. JUSTICE **S.M.SUBRAMANIAM**

Tr.C.M.P(MD)No.248 of 2016
and C.M.P(MD)No.4942 of 2016

Nagaraj

... Petitioner

Vs.

K.Pandilakshmi

... Respondent

PRAYER: Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., to withdraw the petition in H.M.O.P.No.952 of 2015 on the file of the Family Court, Madurai and to transfer the same to the Sub Court, Theni.

For Petitioner
For Respondent

: Mr.P.Samuel Gunasingh
: Mr.R.Suriyanarayanan

O R D E R

The Transfer Civil Miscellaneous Petition is filed to withdraw the petition in H.M.O.P.No.952 of 2015 on the file of the Family Court, Madurai and to transfer the same to the Sub Court, Theni.

2.The marriage between the petitioner and the respondent was solemnized on 09.06.2004 as per Hindus Rights and Customs.

3.The contention of the petitioner is that the petitioner is working as Conductor in Transport Corporation at Theni and out of the wedlock, two female children born and both of them are in the custody of the petitioner and school going. Further, the petitioner contended that due to frequent quarrel with the respondent, she left the matrimonial home and living separately. The petitioner states that the respondent is working in Theni as Assistant Professor and therefore, the petition filed by the respondent in H.M.O.P.No.952 of 2015 for divorce is to be transferred to Sub Court, Theni.

4.The petitioner also filed a petition in H.M.O.P.No.5 of 2016 for restitution of conjugal rights, which is pending before the Sub Court, Theni.

5.The convenience of both the parties would be at Theni and the respondent filed the petition for divorce before the Family Court, Madurai with an idea to harass the petitioner and



therefore, the transfer petition is filed.

6.The learned counsel for the respondent opposed this petition by stating that, the petitioner has forcibly taken the custody of one child in spite of the orders passed by the Family Court, Madurai and further the respondent left the matrimonial home at her own volition and not at the instance of the petitioner. Hence, this petition deserves to be dismissed.

7.I have considered the rival contentions of the respective parties.

8.The admitted facts between the parties are that both the petitioner and the respondent are residing at Theni and two female children are in the custody of the petitioner / husband and one child is school going and another child is looking after by the parents of the petitioner. Under these circumstances, the balance of convenience is on the side of the petitioner and if the transfer is not ordered, he will be prejudiced and it will be difficult for him to maintain the children and attend the Family Court at Madurai.

9.Considering the facts and circumstances of the case and the fact that the petitioner / husband is having the custody of the two female children and looking after them, this Court is of the view that the Transfer Civil Miscellaneous petition deserves to be considered and accordingly, the Transfer Civil Miscellaneous petition is allowed and H.M.O.P.No.952 of 2015 pending before the Family Court, Madurai is ordered to be transferred to Sub Court, Theni. No costs. Consequently, connected C.M.P.is closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1.The Judge,
Family Court, Madurai.

2.The Subordinate Judge,
Sub Court, Theni.

+1cc to Mr.R.SURIYANARAYAN Advocate in SR. No.64696

NBJ

JS/CM/MSA/20.02.2017/2P-4C

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