



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.04.2016

CORAM:

THE HONOURABLE MS. JUSTICE V.M. VELUMANI

TR.C.M.P.(MD) No.50 of 2016 and

CMP(MD).No.1053 of 2016

S. Kalicharan : Petitioner/Respondent
Vs.

S. Sowmiya : Respondent/Petitioner

Prayer: This Transfer CMP is filed under Section 24 of CPC praying to withdraw and transfer the case in HMOP.No.5 of 2015 from the file of the Sub Court, Paramakudi, Ramanathapuram District to Sub Court, Periyakulam.

For Petitioner : Mr.R. Shankar Ganesh

For Respondent : Mr.R. Narayanan

ORDER

The Transfer Civil Miscellaneous Petition is filed to withdraw and transfer the case in HMOP.No.5 of 2015, on the file of Sub Court, Paramakudi, Ramanathapuram District, to Sub Court, Periyakulam.

2. The petitioner herein is the husband and the respondent is the wife. The marriage between the petitioner and the respondent was solemnized on 03.11.2004. After marriage, both were living together in matrimonial home at Periyakulam. A male child was born in the wedlock. Due to the dispute, both are living separately. The respondent filed HMOP.No.5 of 2015, before the Sub Court, Paramakudi, Ramanathapuram District, for divorce. The petitioner filed HMOP.No.18 of 2015, before the Sub Court, Periyakulam for restitution of conjugal rights. The petitioner seeking transfer on the ground that he met with an accident and underwent surgery and therefore, his movements are restricted and he finds it very difficult to move from one place to another place. According to the petitioner, HMOP filed by him in HMOP.No.18 of 2015 is pending before Sub Court, Periyakulam.

3. The respondent filed counter affidavit and denied all the averments made by the petitioner. The respondent stated that now the petitioner recovered from illness and frequently, visiting Madurai and Chennai. She further stated that the respondent is residing at Sayalkudi, Kadaladi Taluk, Ramanathapuram District. The distance between Sayalkudi and Periyakulam, is more than 200 Kms and it is very difficult for her to travel such a long distance along with minor child, to attend HMOP.No.18 of 2015, on the file of Sub Court, Periyakulam. The respondent also submitted that already trial commenced and PW.1 was examined in chief and documents were marked and posted for cross examination of PW.1 on 21.04.2016.

<https://hcservices.ecourts.gov.in/hcservices> In the circumstances, the petitioner filed this petition to transfer HMOP.No.5 of 2015 on the file of Sub Court, Parmakudi to Sub Court, Periyakulam, to be tried along with HMOP.No.18 of 2015, on the file of the Sub Court, Periyakulam.



5. Heard the learned counsel appearing on either side.

6. From the materials available on record it is seen that HMOP.No.18 of 2015 filed by the respondent for divorce is pending before Sub Court, Paramakudi, Ramanathapuram District and the trial has already commenced and it is not necessary for the petitioner to be present for each and every hearing. During the trial he can give instructions to his counsel for cross examination of the respondent. He can appear before the Court to give evidence and being cross examined. It is also contended by the learned counsel for the respondent that the petitioner recovered from illness and he is travelling to Madurai and Chennai frequently. In the circumstances, contention of the learned counsel for the petitioner that the petitioner could not travel to Paramakudi is untenable. It is well settled that whenever, the transfer petition is filed in matrimonial disputes, the convenience of the wife shall be given preference.

7. In view of the submissions made by the learned counsel on either side that the parties and subject matter of the issue is one and the same and to avoid conflicting decisions and in the interest of justice, both H.M.O.P.No.18 of 2015 and HMOP.No.5 of 2015 are to be tried together in the same Court.

8. Accordingly, this Transfer Civil Miscellaneous Petition is disposed of and H.M.O.P.No.18 of 2015, pending on the file of Sub Court, Periyakulam, is hereby withdrawn and transferred to the file of Sub Court, Paramakudi, Ramanathapuram District, to be tried along with H.M.O.P.No.5 of 2015, filed by the respondent, if the same is not yet disposed of. The learned Subordinate Judge, Periyakulam, is directed to send the case bundles to Sub Court, Paramakudi, Ramanathapuram District, immediately. The Registry is also directed to send back the papers that are pending before the Registry. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/

Assistant Registrar(CS-II)

/TRUE COPY/

Sub Assistant Registrar(C.S)
Madurai Bench of Madras High Court,
Madurai.

To

1. The Subordinate Judge, Paramakudi, Ramanathapuram District.
2. The Subordinate Judge, Periyakulam.

Copy to:The Section Officer,V.R. Section,

Madurai Bench of Madras High Court,Madurai.

+1cc to M/S.R.Shankar Ganesh, Advocate in SR.No.20796

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