

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2017

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

TR.C.M.P.No.771 of 2017 and

C.M.P.No.15671 of 2017

Mr.Palanivel Ramachandran ... Petitioner

...VS...

Ms.Purnima Shanmugham ... Respondent

Prayer: Transfer Civil Miscellaneous Petition filed under Section 24 of the Civil Procedure Code seeking to withdraw and transfer the H.M.O.P.No.407 of 2016, pending on the file of the Sub Court Poonamallee to be tried along with O.P.No.3271 of 2014 on the file of the III Additional Family Court, Chennai.

For Petitioner : Ms. Selvi George

For M/s.Majestic Law Firm

For Respondent : Ms.Sheila Jayaprakash

ORDER

The husband in a matrimonial dispute has filed the above Transfer Civil Miscellaneous Petition seeking to transfer H.M.O.P.No.407 of 2016, pending on the file of Sub Court, Poonamallee to be tried along with O.P.No. 3271 of 2014, on the file of III Additional Family court at Chennai.

2. The case of the Petitioner/husband is that the marriage between the petitioner and the respondent was solemnized in the year 2013 at New Woodlands, Mylapore. Though they initially lived in Singapore, due to misunderstanding between the petitioner and respondent, they got separated from the matrimonial home. The respondent/wife filed O.P.No. 3271 of 2014, on the file of the III Additional Family Judge, Chennai, for divorce. After the service of notice, the petitioner who was the respondent in the said O.P., has filed his counter affidavit on 07.04.2016, almost after 2 years and counselings were held between the parties. In the meanwhile, the trial in the O.P.No.3271 of 2014 has started. Whiles, the petitioner/husband had filed H.M.O.P.No.407 of 2016, on the file of

Sub Court at Poonamalle, for restitution of conjugal rights and the said O.P. is now sought to be transferred to the Family court, Chennai.

3. The only question that has to be decided in the petition is that whether the subsequent O.P. filed by the petitioner/husband should be transferred to the Family Court, Chennai to be tried along with O.P.No.3271 of 2014.

4. The learned counsel for the petitioner/husband has stated that the parties in both the O.P.'s are same, excepting the reliefs sought for are different.

5. Admittedly, the respondent had filed the petition for restitution of conjugal rights, subsequent to the filing of wife's petition for divorce. The petitioner also had knowledge about the O.P. filed by the wife. He has also filed his counter and the trial had commenced and it is almost in the completion stage. Whiles, the husband had filed the subsequent O.P. for restitution of conjugal rights on second thought. It appears from the records that the said O.P. has been filed after filing the counter in the O.P. filed by the wife for divorce. There is no valid explanation given by the petitioner as to why the O.P. for

restitution of conjugal rights was filed before the Sub Court, Poonamallee when the marriage was solemnized in Hotel Woodlands, which is within the city, giving rise to jurisdiction to Family court, Chennai. Even otherwise it was open to the petitioner to have filed the transfer petition at the earliest before the commencement of the trial in O.P.No. 3271 of 2014. Admittedly, when both parties are travelling from different parts of the world, their intention should be to complete the trial at the earliest and take an order. When the respondent counsel was asked as to why the wife had not made an attempt to transfer the O.P. filed by her husband to try along with the O.P. filed by her, it is stated that though the H.M.O.P.No.407 of 2016 was filed by her husband in the year 2016, notice was served on the respondent/wife only in the year 2017. Immediately, the respondent/wife has filed her counter on 22.06.2017 and thereafter this petition for transfer came to be filed. It is the contention of the learned counsel for the respondent that the petitioner has filed this petition only to vex the respondent and to drag on the proceedings . This transfer petition filed, according to her is an abuse of process of law and it has delayed and obstructed the principles of natural justice.

6. It is true that if the matter is not transferred it may lead to conflict of Judgments. However, so far as the matrimonial matter is concerned, cause of action for divorce is cruelty and the same is not the cause of action for restitution. Infact the Judgment that may be passed in the O.P.No.3271 of 2014 for divorce will have bearing on the O.P.No.407 of 2016, before the Sub Court Poonamallee. As pointed out by the learned counsel for the respondent, the O.P. filed before the Family Court, Chennai for divorce has almost come to an end and combining the other O.P. by transferring the same only would further prolong the matter. As the parties are living outside the country, it would lead to irreparable loss and serious prejudice as commencing a fresh trial would result in waste of time, money and energy.

7. Section 21 A of the Hindu Marriage Act, 1955 empowers the Court to transfer petitions in certain cases. Section 21 A being the statutory provision deals with the particular situation of two proceedings in two different places. It should be normally accepted that the parties would be governed only by that provision. Nevertheless, Section 24 of Civil Procedure Code is a provision which enables the party to approach High Court. In an appropriate case, the High Court can order transfer notwithstanding Section 21 A of the

Hindu Marriage Act. Section 21A incorporates just, fair and proper way of dealing with the situation. An analysis of Section 24 of Civil Procedure Code makes it abundantly clear that for ends of justice, wide power and jurisdiction have been conferred on this Court in the matter of transfer of any proceeding. In the case on hand, the H.M.O.P.No.407 of 2017 is filed by the husband for restitution of conjugal rights despite having knowledge about the previous case is only an unhealthy practice and is a counter blast to the O.P. filed by the wife. There is no bonafides in the Act of the husband, by filing the O.P. or in asking for transfer. Though the cross petition filed by the two spouses against each other under Sections 9 and 13 of Hindu Marriage Act, the consolidation of them or joint hearing of the both cannot be permitted. In considering the question of transfer, the general disadvantageous situation of a wife cannot be overlooked. It's more so in the present case, where the wife has to travel each time from U.S.A. Even the travel from U.S.A. to India would be very difficult or tedious. On the other hand, once the divorce petition is decided, the result will have a direct bearing on the other petition. The non-consolidation of the petitions may not create acute difficulty. It may only be a case of some inconvenience and not one of virtual impossibility. These facts would justify that the transfer as prayed for

by the husband is not possible when the same is filed with malafide intention.

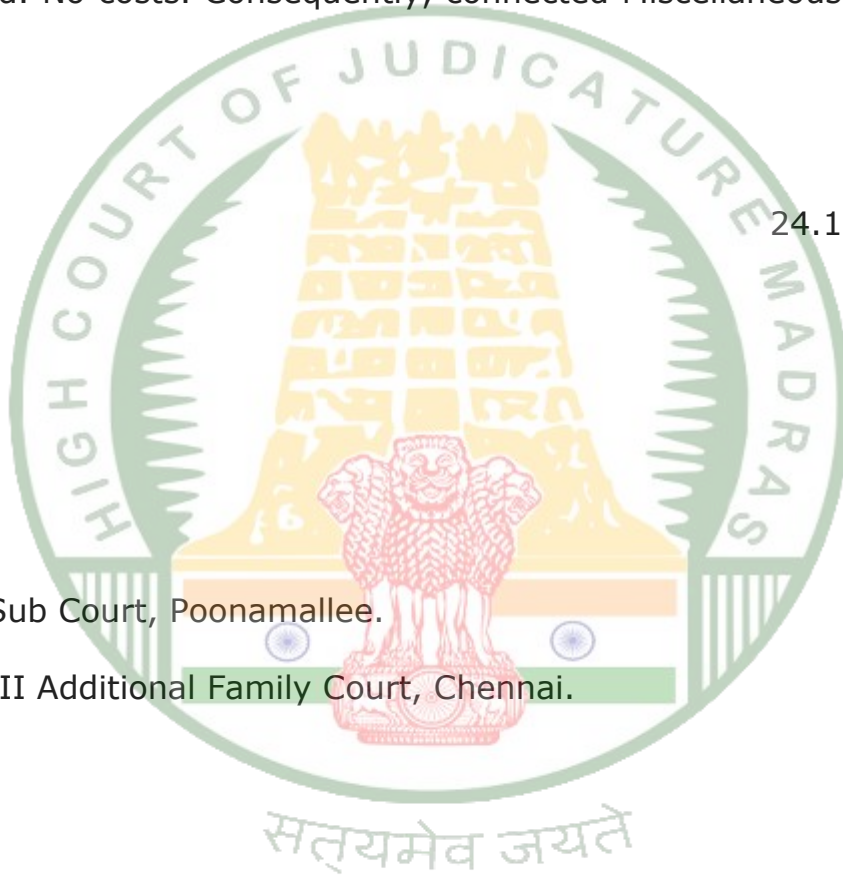
8. In the result, this Transfer Civil Miscellaneous Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

24.10.2017

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To

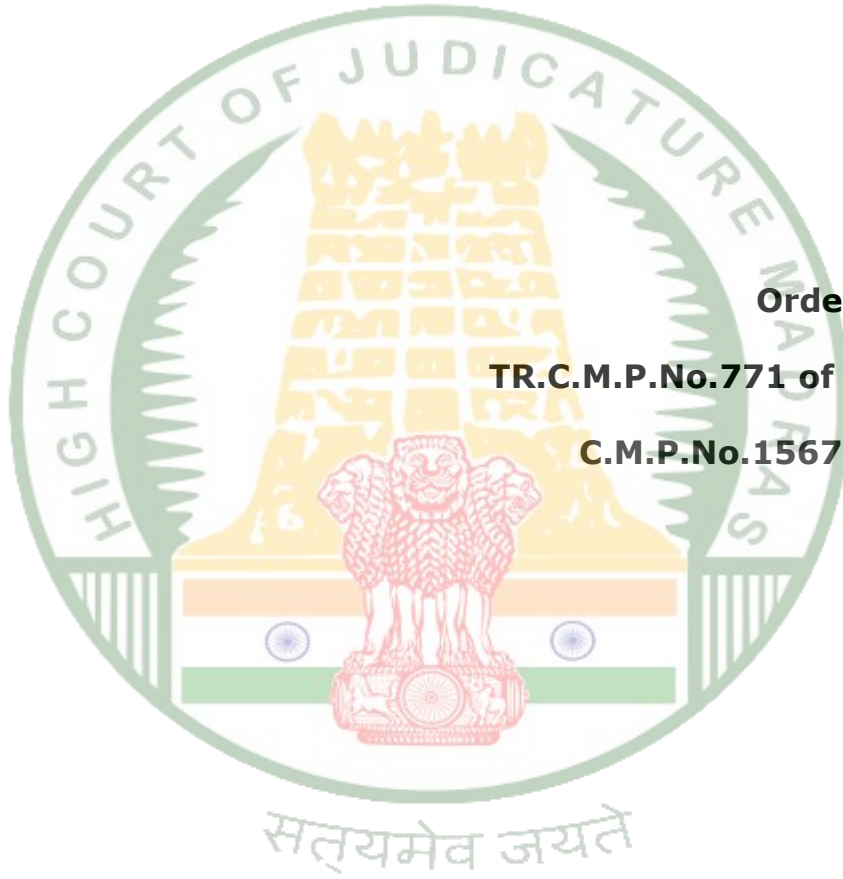
1. The Sub Court, Poonamallee.
2. The III Additional Family Court, Chennai.



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PUSHPA SATHYANARAYANA, J

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**Order made in
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