

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2017

CORAM :

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

Tr.C.M.P.No.443 of 2016
and C.M.P.No.11918 of 2016

Sujithra

... Petitioner

versus

C. Rajagopal

... Respondent

Prayer: This transfer petition has been filed under Section 24 of C.P.C. praying to withdraw H.M.O.P.No.79 of 2015 from the file of the Sub Court, Kuzhithurai and transfer the same to the Family Court, Chennai.

For Petitioner : Mr.Damithalakshmi Denadayalan

For Respondent : Mr.CKM. Appaji

ORDER

The wife in the matrimonial dispute has filed this transfer petition seeking transfer of H.M.O.P.No.79 of 2015 filed by the respondent/husband under Sections 13(1), (1A) & 12(1)(d) of the Hindu Marriage Act, on the file of Sub Court, Kuzhithurai for dissolution of marriage held between the

petitioner and the respondent on 03.09.2012 to the file of Family Court in Chennai.

2. It is stated in the affidavit filed in support of the transfer petition that the petitioner is residing in Chennai and was unemployed. It would be difficult for her to travel with her child for a distance of more than 700 kms from Chennai to Kuzhithurai. It is further alleged that she has been subjected to harassment at the hands of the respondent and his family members. It is apprehended, if the petitioner goes to Kuzhithurai, she may not have any security for her life. Hence, she seeks transfer of the H.M.O.P.No.79 of 2015 pending on the file of Sub Court, Kulithurai to the file of III Additional Family Court, Chennai, wherein the wife had filed O.P.No.2604 of 2016 under Section 9 of the Hindu Marriage Act for restitution of conjugal rights.

3. Heard both the counsels.

4. It is admitted that the O.P. filed by the wife is pending before the III Additional Family Court, Chennai and the husband has to appear for each of the hearing before the III Additional Family Court, Chennai. Besides, both the parties have filed for reliefs mutually contradictory to each other, viz., the wife has filed for restitution and the husband has filed for divorce. In such circumstances, if the O.Ps. are tried independent of each other, it would lead to conflict of decisions.

5. As stated earlier, considering the convenience of the wife and Section 19(iii-a) of the Hindu Marriage Act, which gives preference for the wife in respect of the place where she resides, it would be appropriate to transfer the H.M.O.P.No.79 of 2015, pending on the file of Sub Court, Kulithurai to III Additional Family Court, Chennai, where O.P.No.2604 of 2016 filed by the wife is already pending.

6. As both the matters are to be tried in common before the Family Court, the learned counsel for the respondent seeks the presence of the respondent/husband be dispensed with till such time of commencement of

trial. Considering the request, it would be appropriate to dispense with the presence of the respondent/husband till commencement of the trial or unless otherwise warranted.

7. In the light of the above, the Transfer Civil Miscellaneous Petition is allowed and H.M.O.P.No.79 of 2015 pending on the file of Sub Court, Kuzhithurai shall stands withdrawn and transferred to the file of III Additional Family Court, Chennai to be tried along with O.P.No.2604 of 2016 which is already pending. No Costs. Consequently, Connected miscellaneous petition is closed.

30.11.2017

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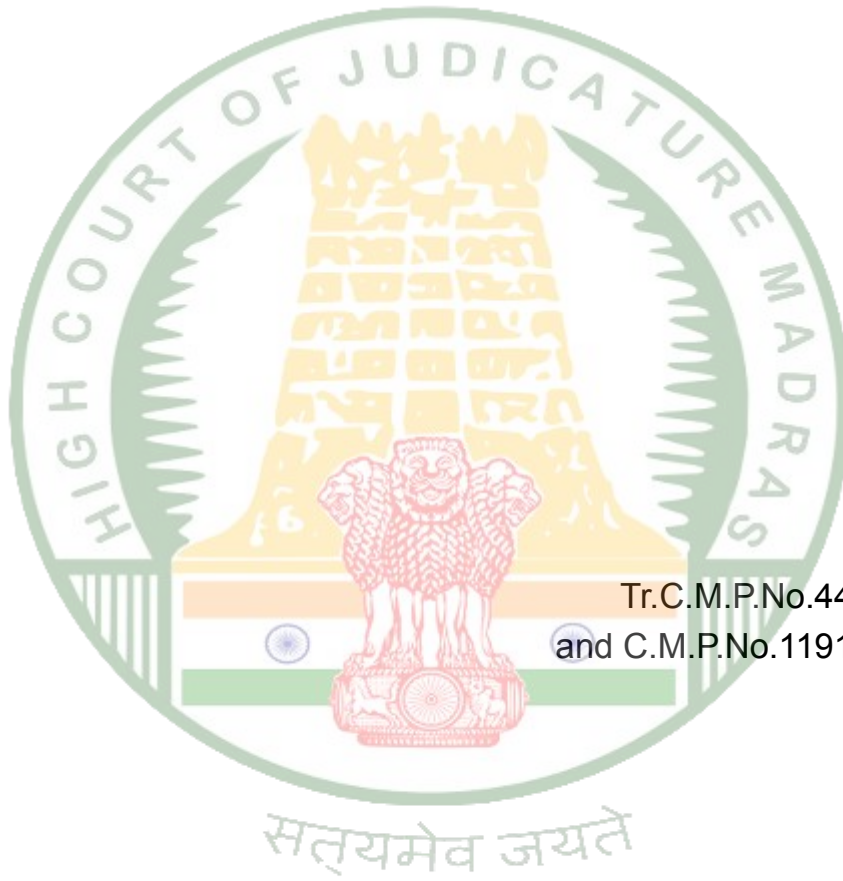
To

1. The Sub Judge,
Kuzhithurai.
2. The III Additional Judge,
Family Court, Chennai.

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PUSHPA SATHYANARAYANA, J.

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