

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:30.10.2017

C O R A M

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

Tr.C.M.P.No.85 of 2016
and
C.M.P.No.1941 of 2016

Kasthuri Bai

.. Petitioner

-VS-

D.Jayandar

... Respondent

Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C praying to withdraw O.P.No.8 of 2015 on the file of the District Judge, Karaikal and transfer the same to the file of the Principal District Court, Cuddalore or any other competent Court.

For petitioner

... Mr.R.Gururaj

For Respondent

.... Served - No Appearance

O R D E R

The Transfer Civil Miscellaneous Petition has been filed by the petitioner-wife seeking to withdraw the O.P.No.8 of 2015 on the file of the District Court, Karaikal and transfer the same to the file of the Principal District Court, Cuddalore.

2. O.P.No.8 of 2015 filed by the respondent-husband under Sections 24 and 25 of the Guardian and Wards Act, 1890 before the District Judge, Karaikal for custody of child.

3. The Wife has filed a maintenance petition in M.C.No.14 of 2015, which is pending before the Mahila Judge, Cuddalore. It is only a counter blast to M.C.No.14 of 2015, the husband has filed O.P.No.8 of 2015 against the petitioner.

4. Learned counsel for the petitioner contended that when the minor child is living with the mother in Neyveli, the Guardian O.P ought to have been filed only in the Court having jurisdiction over the ordinary residence of the minor, whereas, the respondent-husband has filed the Guardian O.P. before the District Judge, Karaikal. Hence, the transfer is sought for.

It is further stated that the husband is prosecuting the case filed by the wife in M.C.No.14 of 2015 before the Mahila Judge, Cuddalore. It is also stated that the respondent is living in France. If the Guardian O.P is transferred to Principal District Court, Cuddalore, the respondent would not be prejudiced, as he will be prosecuting the case through his counsel.

5. Heard the learned counsel for the petitioner and perused the materials available on record.

6. It is seen that the private notice as well as the Court notice served on the respondent returned with the endorsement as "left India". As alleged in the affidavit itself, it is evident that the respondent is living in France. Therefore, the notice sent privately and through Court, returned with the said endorsement. Hence, the name of the respondent was printed in the cause list. Though the name of the respondent is printed in the cause list today, there is no representation for the respondent either in person or through counsel.

7. Considering the above facts and the inconvenience pleaded by the petitioner-wife and also considering the provisions of Section 19 (iii-a) of the Hindu Marriage Act which gives preference for the wife to file a petition in respect of the place where she resides, this Court is inclined to transfer O.P.No.8 of 2015 on the file of the District Court, Karaikal to the file of the Principal District Court, Cuddalore.

8. Accordingly, the Transfer Civil Miscellaneous Petition is allowed and O.P.No.8 of 2015 pending on the file of the District Court, Karaikal shall stand withdrawn and transferred to the file of the Principal District Court, Cuddalore. No costs. Consequently, connected miscellaneous petition is closed.

WEB COPY

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

srn

To

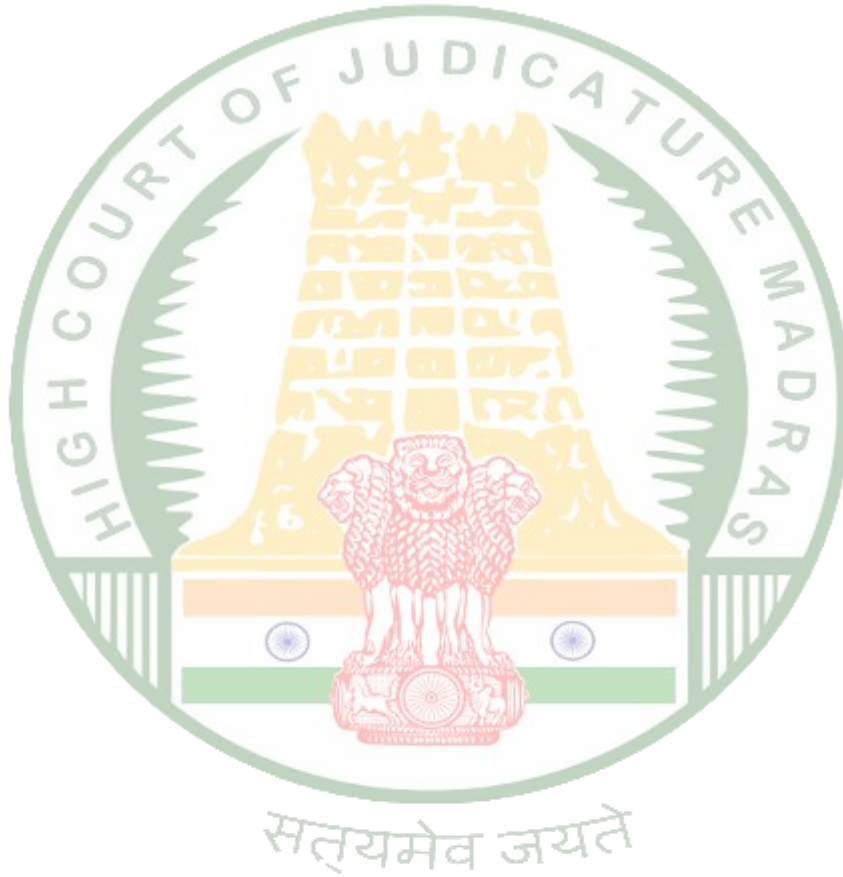
1.The District Judge, Karaikal

2.The Principal District Court, Cuddalore

+1cc to Mr.R.GURURAJ Advocate, S.R.No. 77254

Tr.C.M.P.No.85 of 2016
and

C.M.P.No.1941 of 2016



WEB COPY