



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.11.2017

CORAM :

THE HONOURABLE MR. JUSTICE S. BASKARAN

Tr.C.M.P(MD) .No.376 of 2017
and
C.M.P. (MD) .No.7652 of 2017

Vasuki Devi

... Petitioner

vs.

Manikandan @ Sivanathan

... Respondent

Prayer: This Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C to withdraw and transfer the case, in H.M.O.P.No.445 of 2015 pending on the file of the Principal Sub Court, Trichy to Sub Court, Udumalpet.

For Petitioner : Mr.P.Paranthaman

For Respondent : Mr.Madhu

ORDER

The petitioner has come forward with this petition seeking to transfer H.M.O.P.No.445 of 2015 from the file of the Principal Sub Judge, Trichy to the Sub Court, Udumalpet.

2.The petitioner states that she got married to the respondent on 12.12.2010 and after marriage, she came to know that the respondent is not employed and he has not completed the B.E Course. After marriage they lived in the petitioner's parents home, at Tiruppur Taluk and there also, the respondent was not doing any work. During the month of August 2011, the respondent quarrelled with the petitioner and went away to his parent's home in Trichy District. Out of the wedlock, the petitioner gave birth to a female child on 23.12.2011 and she is now residing in her parent's home with her child. The petitioner has studied B.Sc., Nursing Course and she is now working as a Staff Nurse in Palani. The respondent has filed H.M.O.P.No.445/2015 on the file of the Principal Sub Judge, Trichy, seeking divorce and the petitioner finds it difficult to travel to Trichy as she is not only employed but also she has to take care of her female child. Hence, the petitioner seeks transfer as mentioned in this petition.



3. On the other hand, the learned counsel for the respondent contended that the earlier Transfer Civil Miscellaneous Petition filed by the petitioner was dismissed for non prosecution and as such, this petition will not lie. However, representing the same, the learned counsel for the petitioner relied upon the ruling laid down in the case of **Dhyanapeta Charitable Trust rep. by its Trustee Vs. Nakkheeran Publications, rep. by its Editor reported in 2010(5) CTC 283**, to contend that the earlier petition was disposed of only for non prosecution and not on merits and hence the same will not be barred by res-judicata. It is true that only when the earlier matter is disposed of on merits, the same will not be barred by res-judicata. Admittedly, the earlier Transfer Civil Miscellaneous Petition Tr.C.M.P.(MD).No.240 of 2016 was dismissed only for non-prosecution and as such the same will not be barred by res-judicata.

4. The learned counsel for the respondent is present and he has no other serious objection to entertain this petition and states that instead of Udumalpet, the case may be transferred to the Sub Court, Palani. The learned counsel for the petitioner also agreed for the same.

5. In such circumstances, considering the reasons stated by the petitioner and other considerable circumstances, this Court is inclined to entertain this petition by transferring the H.M.O.P.No.445 of 2015 to the Sub Court, Palani. The point is answered accordingly.

6. In the result, this petition is allowed and H.M.O.P.No.445 of 2015 is transferred from the file of the Principal Sub Court, Trichy, to the file of the Sub Court, Palani. The Sub Judge, Palani, is directed to dispose of H.M.O.P.No.445 of 2015 as early as possible. Consequently, connected Civil Miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Subordinate Judge, Trichy.
2. The Subordinate Judge, Palani.

+ 1 cc TO Mr.J.Madhu , Advocate in SR No. 85498

TM/PSD

AE/JC/SAR2/22.11.2017/2P/4C

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