

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P. No.788 of 2017
and C.M.P.No.16040 of 2017

V.Manimegalai

... Petitioner

Vs.

Dr.T.Mathivanan

... Respondent

Prayer:- Petition has been filed under Section 24 of C.P.C., to withdraw new H.M.O.P.No.2 of 2016 in H.M.O.P.No.238 of 2007 pending on the file of the Subordinate Court, Thuraiyur and transfer the same to the file of the Family Court, Chennai.

For Petitioner : M/s.S.Jayakumari

For Respondent : No Appearance

O R D E R

This petition is filed to withdraw new H.M.O.P.No.2 of 2016 in H.M.O.P.No.238 of 2007 pending on the file of the Subordinate Court, Thuraiyur and transfer the same to the file of the Family Court, Chennai.

2.The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was conducted on 10.02.1989 at Sirthiruttai Kalyanam at Sodambiga Kalyana Mandapam at Thuraiyur, Trichy. In the wedlock, two female children are born and they are aged about 27 and 21 years. The first daughter by name Mauriya has completed her B.E, MBA and working in private concern and second daughter by name Karuniya is doing her M.B.B.S 4th year. Due to difference of opinion, the petitioner and respondent are living separately. The petitioner filed H.M.O.P.No.114 of 1999 on the file of the I Additional Family Court for judicial separation. After several counselling, the petitioner and respondent arrived at a compromise and they agreed to live together and the said H.M.O.P was ordered. Subsequently, the respondent behaved more violently and treated the petitioner cruelly.

3. In the circumstances, the petitioner filed H.M.O.P.No.2653 of 2005 on the file of the I Additional Family Court, Chennai for divorce. After contest, by the order dated 26.05.2009, the said H.M.O.P was ordered and exparte decree of divorce was granted. The respondent did not take any steps to get the exparte decree set aside but often comes to the office of the petitioner and behaved indecently. After 10 years of decree of divorce, the respondent filed H.M.O.P.No.238 of 2007 before the Principal Subordinate Court, Trichy for restitution of conjugal rights and the same was sent to the Subordinate Court, Thuraiyur and renumbered as H.M.O.P.No.2 of 2016 and posted for hearing.

4. According to the petitioner, she is residing at Villivakkam, Chennai and working in AGS as Assistant Accounts Officer. It is very difficult for her to take leave often to attend the Court proceedings. Both the daughters are in need of the petitioner's presence and she is not having anybody to take care of the children in her absence. In the circumstances, she has come out with the present Transfer Civil Miscellaneous Petition for transfer of new H.M.O.P.No.2 of 2016 in H.M.O.P.No.238 of 2007 from the file of the Subordinate Court, Thuraiyur to the file of the Family Court, Chennai.

5. Heard the learned counsel for the petitioner and perused the materials available on record. Though notice was served on the respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

6. It is well settled law that whenever the transfer application is filed in matrimonial disputes, the convenience of the wife shall be given preference, as held by the Hon'ble Supreme Court in the Judgments reported in 2008 (9) SCC 353 [Arti Rani @ Pinki Devi and another Vs. Dharmendra Kumar Gupta] and AIR 2002 SC 396 [Sumita Singh Vs. Kumar Sanjay and another].

7. Having regard to the submissions made by the learned counsel for the petitioner and the decisions of the Hon'ble Apex Court referred to above, the petition in new H.M.O.P.No.2 of 2016 in H.M.O.P.No.238 of 2007 is ordered to be withdrawn from the file of the Subordinate Court, Thuraiyur and transferred to the file of the Family Court, Chennai. The learned Subordinate Judge, Thuraiyur is directed to transmit all the records pertaining to new H.M.O.P.No.2 of 2016 in H.M.O.P.No.238 of 2007 to the file of the Family Court, Chennai, within a period of two weeks from the date of receipt of a copy of this order.

8. Accordingly, this Transfer Civil Miscellaneous petition is ordered. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

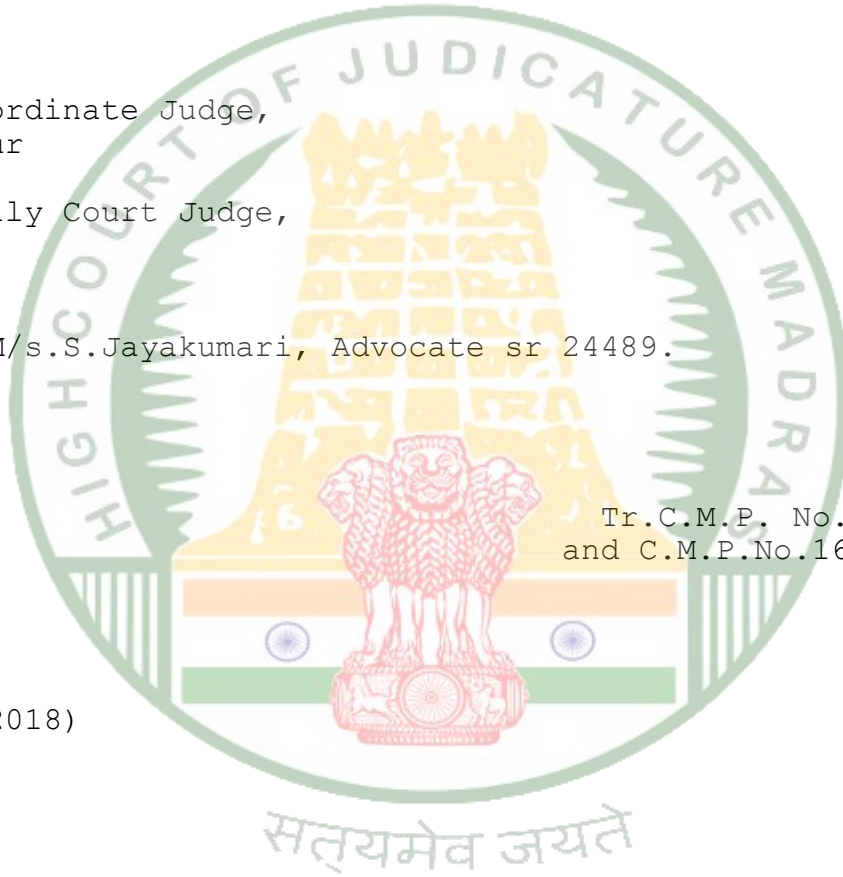
1.The Subordinate Judge,
Thuraiyur

2.The Family Court Judge,
Chennai

+1 CC to M/s.S.Jayakumari, Advocate sr 24489.

Tr.C.M.P. No.788 of 2017
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SSD(CO)
SP(24/04/2018)



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