

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Transfer CMP. No.172 of 2018
and C.M.P.No.4666 of 2018

B.Vasanthakumari

... Petitioner

Vs

Balaji

... Respondent

PRAYER: Transfer Civil Miscellaneous Petition filed under Section 24 of the Code of the Civil Procedure to withdraw the case in H.M.O.P.No.229 of 2017 pending on the file of the Principal Subordinate Court, Cuddalore and to transfer the same to the Family Court, Villupuram.

For Petitioner : M/s.C.Munusamy

For Respondent : No appearance

O R D E R

Transfer Civil Miscellaneous Petition filed under Section 24 (1) (b) (ii) of the Code of the Civil Procedure to withdraw the case in H.M.O.P.No.229 of 2017 pending on the file of the Principal Subordinate Court, Cuddalore and to transfer the same to the Family Court, Villupuram.

2) The petitioner is the wife and the respondent is the husband. The marriage between the petitioner and the respondent was solemnized on 12.09.1999 at Murugalaya Thirumanamandapam, Kuoothapakkam, Cuddalore, in accordance with, Hindu Rites and Customs. After the marriage, both the petitioner and respondent were living in the matrimonial home in Thotti Village. Due to the wedlock, the petitioner gave birth to one male and one female child. Unfortunately, on 23.04.2010 her son Jawahar died owing to sudden illness of Diarrhea and Epilepsy. Subsequent to that, due to the difference of opinion, the petitioner and the respondent are living separately. The petitioner filed an application under Section 125 Cr.P.C., before the learned Family Court, Villupuram, in which, she is claiming maintenance from the respondent. The said application was now pending on the file

of the Family Court, Villupuram in M.C.No.14 of 2017. In the meanwhile, the respondent filed an application before the Principal Subordinate Court, Cuddalore.

3) Today, when the petition is taken up for consideration even after printing the name of the respondent in the cause list, none have been represented the case on behalf of the respondent.

4) According to the petitioner she is residing in Ramareddykulam, Mitta Mandakapattu Mathura, Villupuram Taluk, along with her parents. At the same time, the respondent was residing in Thotti village, Veeranam Mathura, Kandamangalam Union, Villupuram Taluk. The distance between the Cuddalore and the Villupuram is more than 40K.Ms. and being a lady it is very difficult for her, to go to Cuddalore and attend the Court proceedings. Further, she is not having any independent income and she is depending on her parents for her day to day expenses and travelling expenses. According to her, unless the H.M.O.P.No.229 of 2017 and the M.C.No.14 of 2017 are heard together and decided jointly, there will be conflicting of Judgments. In the said circumstances, the petitioner has come out with the present Tr.C.M.P.172 of 2018 to transfer the H.M.O.P.No.229 of 2017 pending on the file of the Principal Subordinate Judge, Cuddalore to the file of the Family Court, villupuram.

5) Heard, the learned counsel for the petitioner. Considering the above contention of the learned counsel for the petitioner, it is well settled judicial pronouncement of 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], the convenience of the wife must be given preference in the matrimonial proceedings. Further, as per the provisions of the Hindu Marriage Act, place of the residence of wife must be taken into account.

6) Accordingly, the Transfer Civil Miscellaneous Petition is ordered. The petition in H.M.O.P.No.229 of 2017 is ordered to be withdrawn from the file of the Principal subordinate Court, Cuddalore and ordered to be transferred to the file of the Family Court, Villupuram, to be tried along with M.C.No.14 of 2017 filed by the petitioner, in order to avoid multiplicity of proceedings and conflicting Judgments being delivered by two different Courts. The learned Principal Subordinate Court, Cuddalore is directed to transmit all the records pertaining to H.M.O.P.No.229 of 2017 to the file of the Family Court, Villupuram, within a period of two weeks from the date of receipt

of a copy of this order. On receipt of records, the learned Family Court Judge, Villupuram, is directed to dispose of the case as expeditiously as possible. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sbn

To

1.The Principal Subordinate Judge,
Cuddalore.

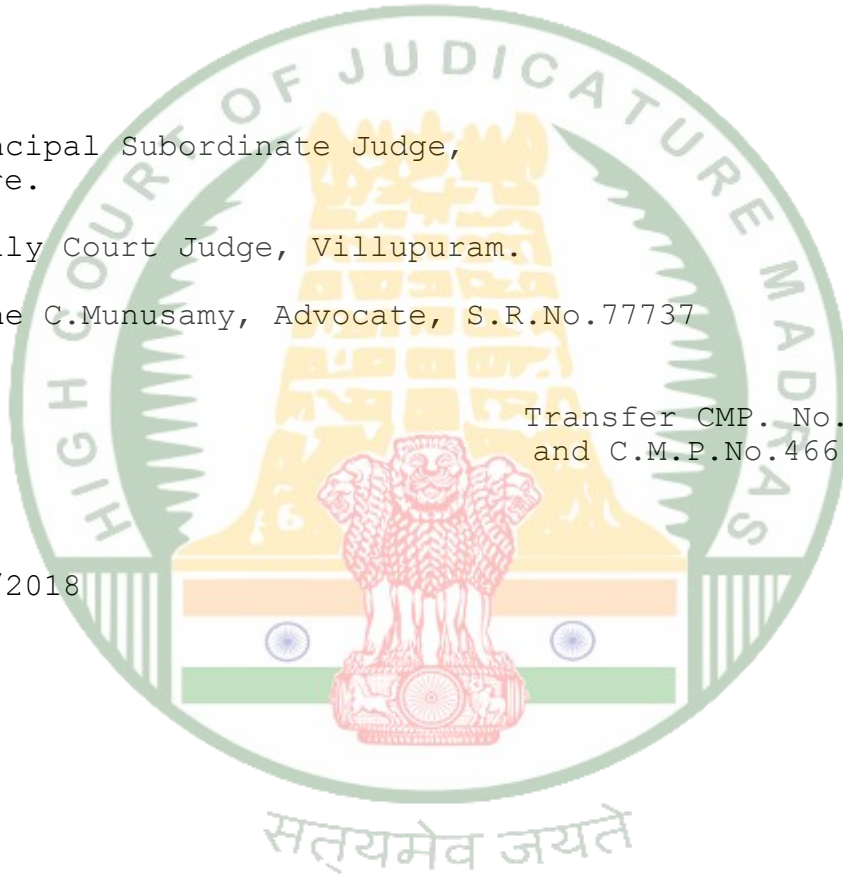
2.The Family Court Judge, Villupuram.

+lcc to the C.Munusamy, Advocate, S.R.No.77737

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MG(CO)

rrs 21/12/2018



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