

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :22.10.2018

PRONOUNCED ON:24.10.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

Tr.C.M.P.Nos.596, 630 and 665 of 2018
and

C.M.P.No.14426 of 2018

&

C.M.P.No.16474 of 2018

&

C.M.P.No.15430 of 2018

Tr.C.M.P.No.596 of 2018 & Tr.C.M.P.No.630 of 2018

M.Sushmaa

...Petitioner

Vs.

S.Sathishkumar

...Respondent

Tr.C.M.P.No.665 of 2018

S.Sathishkumar

...Petitioner

Vs.

M.Sushmaa

...Respondent

Prayer in Tr.C.M.P.No.596 of 2018:

Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., to withdraw the F.C.O.P.No.148 of 2018 pending on the file of the Family Court, Vellore situated in Vellore District and transfer the same to the file of the Sub Court, Sathyamangalam, situated in Erode District to be tried along with H.M.O.P.No.41 of 2018 pending on the file of the Sub Court, Sathyamangalam in Erode District.

Prayer in Tr.C.M.P.No.630 of 2018:

Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., to withdraw the G.W.O.P.No.29 of 2018 pending on the file of the Principal District Judge Court, Vellore, situated in Vellore District and transfer the same to the file of the Principal District Judge Court, Erode, situated in Erode District.

Prayer in Tr.C.M.P.No.665 of 2018:

Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., to withdraw the H.M.O.P.No.41 of 2018 from the file of the Sub Court, Sathyamangalam, Erode District and transfer the same to the file of the Family Court, Vellore to be tried along with the F.C.O.P.No.148 of 2018.

For Petitioner in Tr.C.M.P.Nos.596 & 630 of 2018
and Respondent in Tr.C.M.P.No.665 of 2018

: Mr.M.Roshan Atiq

For Respondent in Tr.C.M.P.Nos.596 & 630 of 2018
and Petitioner in Tr.C.M.P.No.665 of 2018

:Mr.T.M.Hariharan

C O M M O N O R D E R

The petitioner in Tr.C.M.P.Nos.596 and 630 of 2018 and the respondent in Tr.C.M.P.No.665 of 2018 is the wife. The respondent in Tr.C.M.P.Nos.596 and 630 of 2018 and the petitioner in Tr.C.M.P.No.665 of 2018 is the husband.

2. All is not well qua the marital life of the parties. Materials placed on record go to show that the wife has laid the divorce case against the husband in H.M.O.P.No.41 of 2018 and the same is pending on the file of Sub Court, Sathyamangalam. The husband has filed F.C.O.P.No.148 of 2018 for the restitution of conjugal rights and the same is pending on the file of Family Court, Vellore. Furthermore, the husband has also filed G.W.O.P.No.29 of 2018 seeking the custody of the child and the same is pending on the file of the Principal District Court, Vellore. Accordingly, the wife has laid the Transfer Miscellaneous petitions for transferring the proceedings laid by the husband to the Courts at Erode and opposing the same, the husband has laid the Transfer Miscellaneous Petition for transferring the proceeding laid by the wife to the Court at Vellore.

3. The wife has put forth certain inconvenience and hardship in attending the proceedings at Vellore courts. According to the wife, she is a resident of Sathyamangalam Taluk, Erode District and considering the distance between Sathyamangalam and

Vellore being on the higher side, she is unable to attend the proceedings at Vellore Courts and also put forth that her parents are unable to accompany her to Vellore for defending the proceedings laid by the husband at the Vellore Courts and also stated that she has to take care of her female child, who is studying VII standard and unable to travel alone from Sathyamangalam to Vellore in connection with the proceedings laid against her by the husband and furthermore, according to the wife, the Guardian O.P. should be filed only within the jurisdiction of the Court, where the child is residing and accordingly, it is stated that the Guardian O.P should be filed only in the Principal District Court, Erode and therefore, the Principal District Court, Vellore is not having the jurisdiction to entertain the Guardian O.P and accordingly sought for the transfers.

4. Per contra, the husband would contend that inasmuch as the two proceedings connected with the marital issues between the parties are pending in different forums, he has sought for the transfer of the divorce case laid by the wife to the Vellore Court.

5. Admittedly, the two proceedings concerning the marital issues involved between the parties are pending in different forums, and in my considered opinion, the consolidation of the two proceedings and the determination of the same by one and the same would be beneficial to both the parties and by way of the same, the parties would be required to adduce common evidence and furthermore, conflict of decisions could also be avoided. It is thus noted that the cause of justice would be advanced, if both the matrimonial proceedings are clubbed together and determined by one and the same court.

6. The wife has put forth certain inconvenience and hardship in attending the proceeding at Vellore Courts. The distance between Sathyamangalam and Vellore is on the higher side. Furthermore, the wife has to look after the female child. Her aged parents are also unable to accompany her to Vellore Court for defending the proceedings laid against her by the husband. In such view of the matter, it is seen that accordingly, the wife has sought for the transfer of the proceedings laid by the husband to the Courts at Erode. Considering the hardship projected by the wife and also the factum that the husband would not be put to serious loss and hardship, if the matrimonial proceeding laid by him is transferred to Sathyamangalam Court as prayed for by the wife, particularly, when he would be required to defend the wife's proceeding pending on the file of the Sathyamangalam court, in such view of the matter and for the reasons aforesaid, considering the valid grounds projected by the wife for the transfer, accordingly, it is seen that the

wife has made out a justifiable cause for transferring the matrimonial proceeding laid by the husband to the file of the Subordinate Court, Sathyamangalam.

7. As rightly put forth, the Guardian O.P should have been laid by the husband only within the jurisdiction of the Court, where the child is residing. Admittedly, as could be seen from the materials placed on record, the child is residing at Erode and in such view of the matter, considering the position of law with reference to the same and the purport Section 9 of the Guardian and Wards Act, the Guardian O.P should have been filed only in the Principal District Court, Erode and so viewed, it is seen that the Principal District Court, Vellore would not have the jurisdiction to entertain the guardian O.P preferred by the husband.

8. The Counsel appearing for the wife, in support of his contentions placed reliance upon the decisions reported in 2018 SCC online Culcutta 5758 [Ruhi Sahina Vs. Syed Masidur Rahman] and MANU/TN/0056/1990 [K.R.Srinathi Vs. H.Ramakrishnan] and the principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

9. For the reasons aforesaid, F.C.O.P.No.148 of 2018 is withdrawn from the file of the Family Court, Vellore and transferred to the file of the Subordinate court, Sathyamangalam for joint trial along with H.M.O.P.No.41 of 2018 as per law. Similarly, G.W.O.P.No.29 of 2018 is withdrawn from the file of the Principal District Court, Vellore and transferred to the file of the Principal District Court, Erode for disposal as per law.

10. Accordingly, Transfer Civil Miscellaneous Petition Nos.596 and 630 of 2018 are allowed. Resultantly, the Transfer Miscellaneous Petition No.665 of 2018 is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

mfa

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

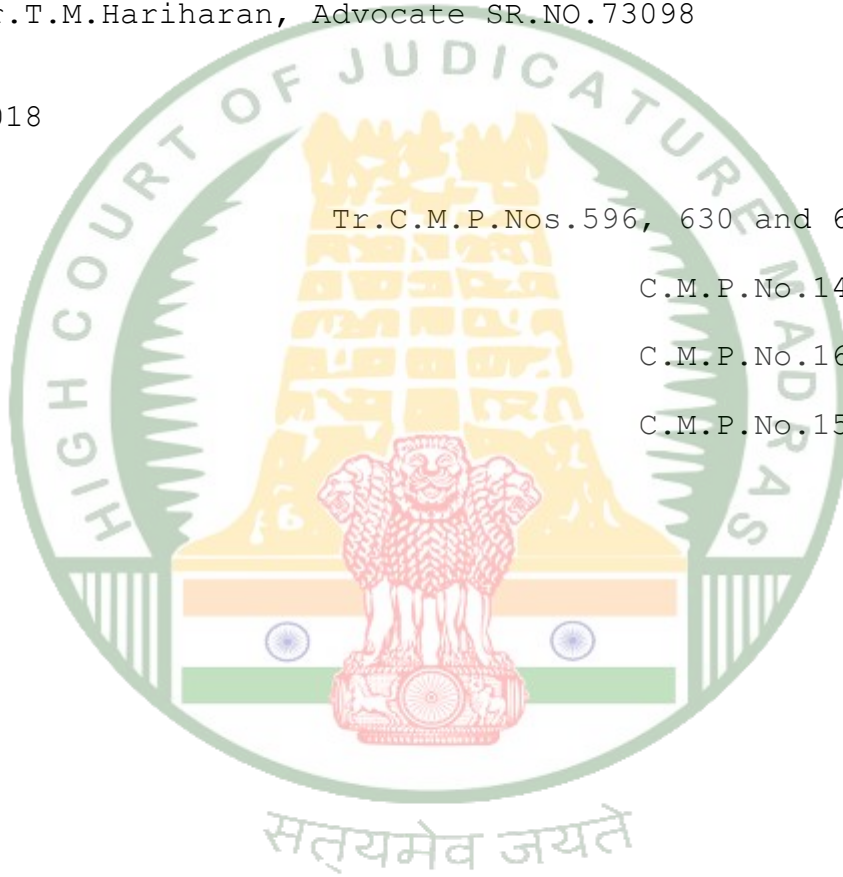
1. The Judge, Family Court, Vellore.
- 2.The Subordinate Judge, Sathyamangalam.
- 3.The Principal District Judge Court, Vellore.
4. The Principal District Judge Court, Erode.

+2cc to Mr.M.Rosahan Atiq, Advocate SR.NO.72802/18

+1cc to Mr.T.M.Hariharan, Advocate SR.NO.73098

SV(CO)

sm:1.11.2018



Tr.C.M.P.Nos.596, 630 and 665 of 2018
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C.M.P.No.14426 of 2018
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