

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Transfer CMP. No.752 of 2018 &

CMP No.18429 of 2018

V. Vignesh

Petitioner / Respondent

Vs

Nivetha @ Sumithra

Respondent / Petitioner

PRAYER: Transfer Civil Miscellaneous Petition filed under Section 24 of Code of Civil Procedure to withdraw H.M.O.P.No.96 of 2018 from the file of Subordinate Court, Mettupalayam and to transfer the same to the file of Subordinate Court, Mettur to try along with H.M.O.P.No. 99 of 2018.

For Petitioner : Ms. A. Chandra

For Respondent : Mr.J.Milton Arul Rajendran for
Mr. S.Nagaraj

O R D E R

This petition has been filed by the petitioner seeking the relief to withdraw H.M.O.P.No.96 of 2018 from the file of Subordinate Court, Mettupalayam and to transfer the same to the file of Subordinate Court, Mettur to try along with H.M.O.P.No. 99 of 2018.

2. The petitioner is the husband and the respondent is the wife. The marriage between the petitioner and the respondent was solemnized on 10.03.2016 at Sree Ragavendra Mahal, Kovilpalayam, Coimbatore. After the marriage, the respondent was living together with the petitioner in the matrimonial home. Due to the wed-lock, the respondent gave birth to one girl child namely Piranivika and now she is aged about 2 years. After few months from the date of delivery, the respondent quarreled with the petitioner without any reasons. During the 2nd week of June 2018, the respondent quarreled with the petitioner and left the matrimonial home. Thereafter, the family members of the respondent came to the house of petitioner and threatening the petitioner's parents. In respect to the quarrel happened between the families of petitioner and the respondent, a case has been registered before the Tiruppur North Police Station in Cr.No. 754 of 2018.

3. According to the petitioner, the respondent's parents are having money and muscle power and hence, the petitioner is facing much difficulty in attending the Court proceedings at Mettur. On the other hand, the learned Counsel appearing for the respondent

would submit that the allegations levelled by the petitioner are all subsequently invented by the petitioner for the purpose of filing this application. Being a lady, the respondent is not in a position to attend the Court proceedings at Mettur. Further, she is not having any independent income and she is depending upon her parents for her day to day needs.

4. The submissions made by the learned Counsel on either side are considered. The distance between Mettupalayam and Mettur is nearly 150 kms. As of now, the case filed by the petitioner, for the relief of divorce is pending before the Subordinate Court, Mettur in HMOP No. 99 of 2018. On the other hand, the petition filed by the respondent for the relief of restitution of conjugal rights is pending with the Subordinate Court, Mettupalayam in HMOP No.96 of 2018. Since, both the applications have been filed in respect to the dispute arising between the petitioner and the respondent, it is necessary to try both the cases simultaneously for avoiding multiplicity of proceedings and for avoiding conflicting of Judgments.

5. Moreover, the respondent, being a lady and she is also having one girl child of 2 years, it is very difficult for her to attend the Court proceedings at Mettur, situated 150 kms away from Mettupalayam. Further, the respondent is depending upon her parents to meet out her expenses. In the said circumstances, attending the Court Proceedings in Mettupalayam is not a difficult task to the petitioner. Further more, in order to decide these type of applications filed under Section 24 of Civil Procedure Code, it is relevant to see the Judgment of our Honourable Apex Court reported in Arti Rani @ Pinki Devi and another Vs. Dharmendra Kumar Gupta reported in 2008(9) SCC 353 and in Sumita Singh Vs. Kumar Sanjay and another reported in AIR 2002 SC 396. In the said Judgment, it was held that the convenience of the wife must be taken into account for deciding these type of applications.

6. Accordingly, in view of the fact that the respondent is having a girl child, it is appropriate to transfer the case in H.M.O.P No.99 of 2018 pending on the file of Subordinate Court, Mettur to the Subordinate Court at Mettupalayam to try along with the case in H.M.O.P No. 96 of 2018.

7. In the light of the above discussions, the Transfer Civil Miscellaneous petition filed by the petitioner is dismissed. In the interest of justice, the case in H.M.O.P.No.99 of 2018 is ordered to be withdrawn from the file of the Subordinate Court, Mettur and ordered to be transferred to the file of Subordinate Court, Mettupalayam to try along with H.M.O.P.No.96 of

2018 filed by the respondent, in order to avoid multiplicity of proceedings and conflicting judgments being delivered by two different Courts. The Subordinate Judge, Mettur is directed to transmit the case records pertaining to H.M.O.P.No.99 of 2018 to the file of Subordinate Court, Mettupalayam within a period of two weeks from the date of receipt of copy of this order. On receipt of such records, the learned Subordinate Judge, Mettupalayam is directed to dispose of both the cases (H.M.O.P.No.99 of 2018 and H.M.O.P.No.96 of 2018) by joint trial as expeditiously as possible. The connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CS)

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Sub Assistant Registrar

vrn

To

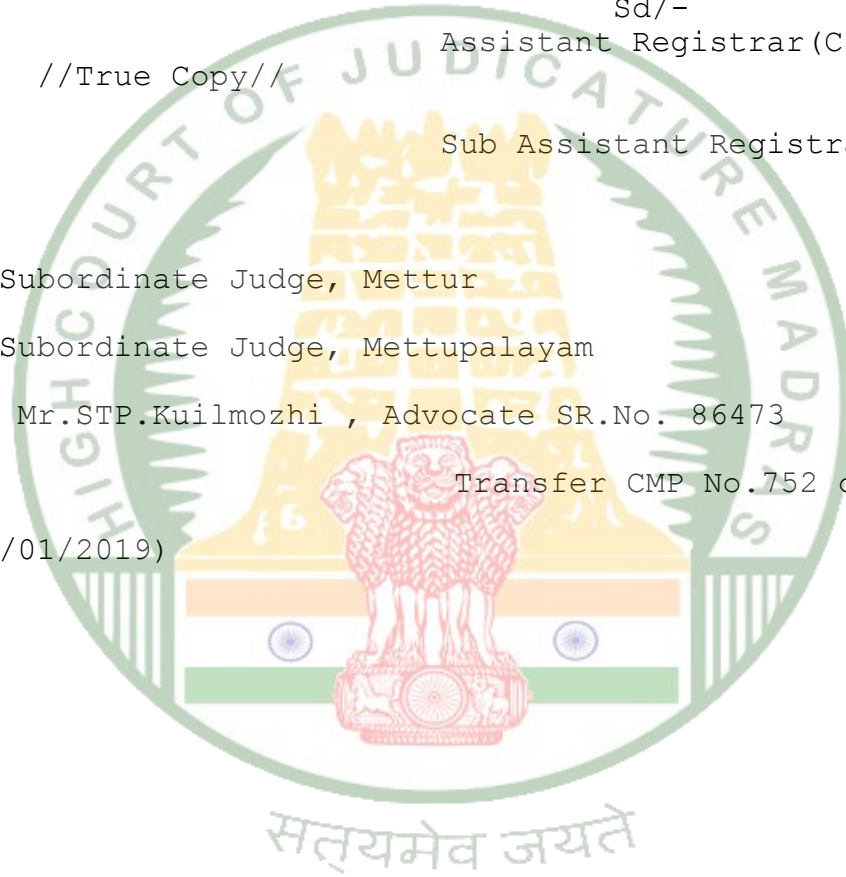
1.The Subordinate Judge, Mettur

2.The Subordinate Judge, Mettupalayam

+1cc to Mr.STP.Kuilmozhi , Advocate SR.No. 86473

Transfer CMP No.752 of 2018

A.SK(22/01/2019)



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