

C.R.P.(PD) No.2481 OF 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:01.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P.(PD) No.2481 OF 2019
and C.M.P.No.16183 OF 2019

Senthamilvelan

... Petitioner

Vs.

Uma Devi

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal order 29.03.2019 passed in Tr.O.P.no.2 of 2019 on the file of the Principal District Judge, Villupuram.

For Petitioner : Ms.P.Kavitha Balakrishnan

ORDER

Challenging the order of transfer made by District Judge, Villupuram transferring the divorce case from Family Court, Villupuram to Subordinate Court, Tindivanam, the petitioner is before this Court.

2. The petitioner / husband filed a petition for divorce before the Family Court, Villupuram. The respondent wife pleading inconvenience and physical hardship, wanted it to be transferred to the Sub Court, Tindivanam, in whose jurisdiction she resides. The District Court after considering the hardship, transferred the divorce petition from Family Court, Villupuram to Sub Court, Tindivanam.

3. According to the learned counsel for the petitioner, the Family Court by itself a District Court and not subordinate to the District Judge and therefore the District Judge has no powers to transfer the petitioner's petition from Family Court, Villupuram to Sub Court, Tindivanam. She would rely on judgment of this court in TR.CMP.No.138 of 2006 dated 30.08.2016 where it is observed as under:

" Section 24 of the Code as extracted above specifies the general power of transfer of withdrawal of any suit, appeal or other proceeding of the High Court and the District circumstances contemplated therein. This provision is nothing but the reflection of exhaustive judicial power to transfer suit etc., and no Court to another unless both the Courts are subordinate to it. Before and application under this Section can be granted, it is implicit that two

conditions should be satisfied, viz., (1) proceedings to be transferred should be subordinate to the High Court or the District Court and competent to try and dispose of the same. The two phraseologies, viz., (1) any Court subordinate to it, and (2) competent to try or dispose of the same are of signal importance and the meaning to be ascribed to those phraseologies would determine the amplitude and the extent of power of transfer vested in the High Court and the District Court under this section. The Court concerned is competent when it can as regards the nature and subject matter of the case and as regards its pecuniary value, entertain a transferred suit, but it does not include competence from the point of view of territorial jurisdiction."

4. It is the contention that only High Court has powers to transfer the case from Family Court to other Courts and not the District Courts.

5. So far as this case is concerned, the District Judge is the Administrative head of the entire District. The Judge appointed to a Family Court may be in the cadre of Subordinate Judge. But, while exercising the power of a Judge of a Family Court, he is conferred with the powers of a District Judge as per Section 7 of The Family

Courts Act, 1984. Section 7(1) (a) & (b) of the Act reads as under:

*"7. Jurisdiction- (1) Subject to the other provisions of this Act,
a Family Court shall-*

*(a) have and exercise all the jurisdiction exercisable by any
district Court or any subordinate civil Court under any law for the time
being in force in respect of suits and proceedings of the nature referred to
in the Explanation; and*

*(b) be deemed, for the purpose of exercising such jurisdiction
under such law, to be a district Court or, as the case may be, such
subordinate civil Court for the area to which the jurisdiction of the Family
Court extends."*

The power exercisable is in respect of nature of proceedings referred to it. Merely because the power of District Judge is conferred on the Family Court in respect of those matters, it will not confer the administrative control equal to a District Judge. While exercising his power in so far as the Family Court matters, he is enjoined with the power of a District Judge. He can transfer the cases from one Family Court to other Family Court or Civil Court for the area to which the jurisdiction of the Family Court extends. When transferring the case from one unit to other unit, the said Court should have jurisdiction

extended to that and that it must be a superior Court or in other words, the Court to which the case is transferred to should be Subordinate to it. In that view of the matter, Family Court, Villupuram is not a superior Court and Subordinate Court, Tindivanam is not subordinate to it and jurisdiction of Family Court does not extend to Sub-Court, Tindivanam. Therefore, the power is vested on the Principal District Judge to transfer the case to a Subordinate Court. Thus, the first limb of the condition of having power and jurisdiction is satisfied. The second limb is that the SubCourt, Tindivanam should be a competent Court to try and dispose of the petition. In so far as this case is concerned, transferee Court is competent to try and decide the issue. Hence transferring a matter which has jurisdiction to try the same is in line with the judgment cited by the petitioner.

6. From a reading of the petition, it is clear that the petitioner's residence is at Villupuram and respondent's residence is at Tindivanam. Considering the hardship caused to the wife, the District Court has transferred the petition to Sub Court, Tindivanam. The ratio laid down in the above cited judgment squarely applies to this case and there is no controversy in the orders passed.

7. The learned counsel would also rely on the very same judgment with regard to the guidelines laid down in 2001 AIHC 1567. The relevant paragraph is extracted hereunder :

"... b) If anyone of the spouse suffers due to any physical ability; or any chronic illness as would render him or her difficult to travel which should be duly certified by a Surgeon/physician in Government Service."

In the instant case, it is the contention of the wife that she cannot travel often to Family Court as she suffers from back pain. That reason was considered by the District Court and the District Court has satisfied that the reason for transfer is sustainable.

8. I do not find any discrepancy in the order passed by the District Court. Therefore, the contentions of the petitioner is not sustainable in law and accordingly civil revision petition dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

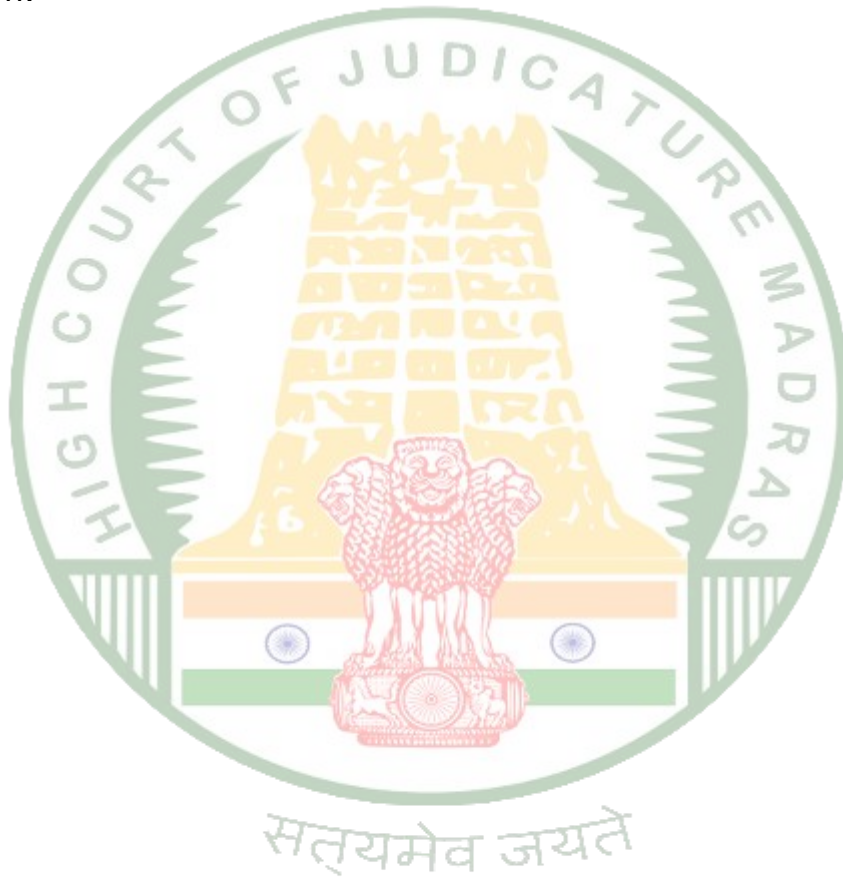
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Index: Yes / No
Speaking order / Non speaking order

To

The Principal District Judge
Villupuram.

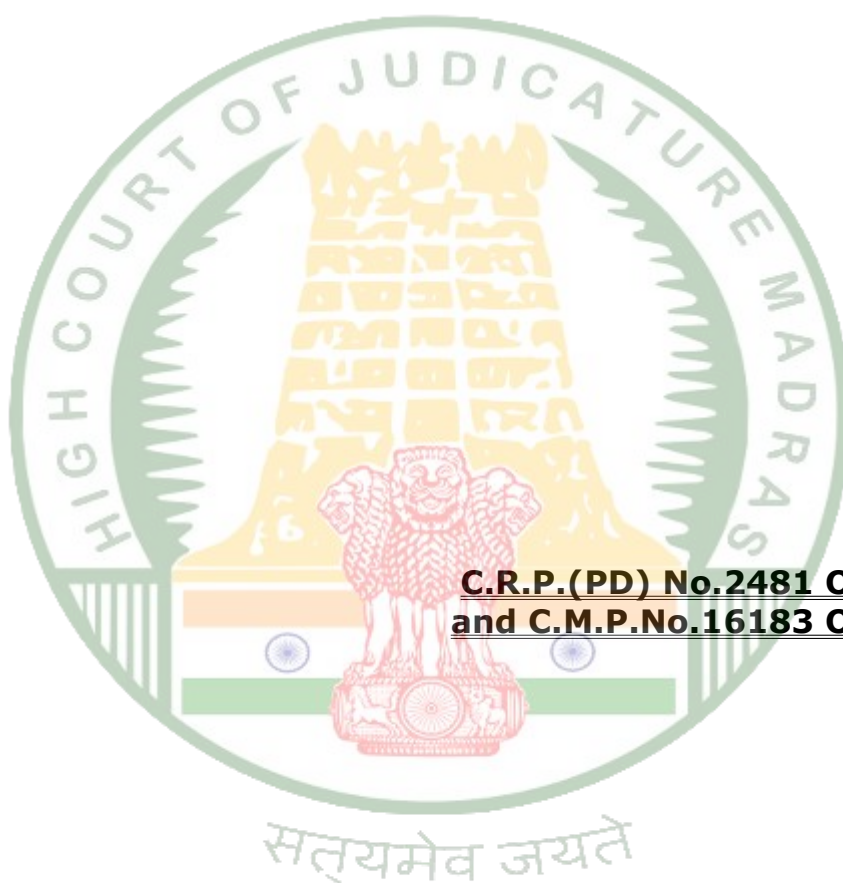


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