

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

TR.C.M.P.No.764 of 2019
and
C.M.P.No.21330 of 2019

V.Deepa ... Petitioner/Respondent

Vs.

Dr.C.Vigneshwaran ... Respondent/Petitioner

Prayer: Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw the H.M.O.P.No.87 of 2018 pending on the file of the Sub Court, Kallakurichi and transfer the same to the file of Family Court, Salem.

For Petitioner : Mr.N.A.Ravindran

For Respondent : Mr.R.Rajavelavan

O R D E R

This Transfer Civil Miscellaneous Petition has been filed seeking for transfer of H.M.O.P.No.87 of 2018 pending on the file of the Sub Court, Kallakurichi and transfer the same to the file of Family Court, Salem.

2. The learned counsel for the petitioner submitted that the petitioner herein is the wife, who has filed the present Transfer Civil Miscellaneous Petition seeking for withdrawal of H.M.O.P.No.87 of 2018 pending on the file of the Sub Court, Kallakurichi and transfer the same to the file of Family Court, Salem.

3. The petitioner filed Tr.C.M.P.No.19 of 2018 seeking transfer of H.M.O.P.No.228 of 2017, which was filed by the respondent under Section 9 of the Hindu Marriage Act, 1955, before the Principal Sub Court, Cuddalore to the Family Court, Salem. This Court by consent of both the counsels allowed the Tr.C.M.P.No.19 of 2018 on 22.03.2018 and transferred the said H.M.O.P.No.228 of 2017 to the file of Sub Court, Kallakurichi, as the respondent has apprehended threat of assault on him by the petitioner.

4. The said H.M.O.P. was re-numbered as H.M.O.P.No.87 of 2018 and process were issued on 07.08.2018 by the Subordinate Court, Kallakurichi for their appearance. From 07.08.2018 till date, there was no progress in the said proceedings as it came to the knowledge of the petitioner that the respondent is employed in Muthammal Engineering College near Rasipuram, which is 20 kilometers from Salem. Hence, the perception of threat of assault at Salem and nearby would have been disappeared and that is why he had taken up employment in an Engineering College near the vicinity of Salem for the safe passage of the respondent to attend the enquiry at the Family Court, Salem. Moreover, the petitioner has a child aged 6 years to be taken care by her and she found it very difficult to attend the hearings at Kallakurichi. The petitioner requested the counsel to take adjournments in certain proceedings during certain hearings due to her inconvenience and hence she filed the present Transfer Civil Miscellaneous Petition seeking transfer of H.M.O.P.No.87 of 2018 pending on the file of the Sub Court, Kallakurichi and transfer the same to the file of Family Court, Salem.

5. Notice was served on the respondent and learned counsel for the respondent appeared and the respondent filed counter affidavit. The learned counsel for the respondent denies all the averments in the petition and states that it is not bonafide statement and it is actuated with manifest malafide intention inspired by vexatious motives. The petitioner cannot be permitted to reopen the order dated 22.03.2018 already made in the previous Transfer Miscellaneous Petition No.19 of 2018 by this Court, wherein at paragraph No.4, it has been clearly disclosed that this Court has already fixed the place of Court at Kallakurichi based on the convenience of parties. Hence, the present Transfer Civil Miscellaneous Petition amounts to re-litigation which is not contemplated under law.

6. The petitioner herein did not file her counter in H.M.O.P.No.228 of 2017 before the Sub Court, Cuddalore and even thereafter when the matter was ordered to be transferred and renumbered in H.M.O.P.No.87 of 2018 on the file of Principal Subordinate Court, Kallakurichi, she neither filed a counter nor a memo expressing her willingness to live with her husband. Thus, the petitioner remains silent without making defence for the last two years, which is contrary to Section 21B (2) of the Hindu Marriage Act, 1955 (Amended Act 68 of 1976 with effect from 27.05.1976). As the petitioner has deliberately and consciously flouted all canons of law, is not entitled for any order of transfer. The conduct of the petitioner in not filing any counter or willingness, would only highlight and spotlight that the petitioner's only motive

is to take the proceedings to Salem to further harass and threaten the respondent.

7. The respondent has been employed in Muthammal Engineering College, Rasipuram is not 20 kilometers away from Salem, whereas, it is 40 kilometers away from Salem. The respondent stayed in relative's house in view of apprehension of threat. The threat of assault continues even now as the father of the petitioner is highly influential person and having political background with ruling party and also associated with rowdy elements. The respondent was beaten by petitioner's father and the respondent sustained fracture. All the relevant documents were already filed in the previous Transfer C.M.P.No.19 of 2018.

8. The respondent is suffering from "Vericose Veins" for the last one year and on 29.09.2019 and on 13.10.2019, he underwent all preliminary medical tests at Government Stanley Hospital, Chennai. He has been advised to undergo operation for the said ailment. He also find it difficult to travel often. If the matter is transferred to Family Court, Salem, it would be difficult for the respondent to attend every hearing. At present, the petitioner is employed at Mahendra College of Engineering, Minnampalli, Salem, which is above 15 kilometers from her residence and their child is already put into the School. The petitioner at regular intervals attends Industrial Visits and Seminars at Kodaikanal and Coimbatore. Therefore, he prayed for dismissal of the Transfer Civil Miscellaneous Petition.

9. Heard the learned counsel for the petitioner as well as the respondent and perused the entire materials on record.

10. From the above materials on record, it is seen that the petitioner is coming from a family, which has support from political persons and the respondent is working as a lecturer in Muthammal Engineering College, Rasipuram and he is staying there. The petitioner herein previously filed a Transfer Civil Miscellaneous Petition in Tr.C.M.P.No.19 of 2018 and this Court by the order dated 22.03.2018, allowed the said Tr.C.M.P. by transferring the said H.M.O.P.No.228 of 2017 pending on the file of the Principal Subordinate Court, Cuddalore to the Subordinate Court, Kallakurichi, for the convenience of the petitioner. The said H.M.O.P.No.228 of 2017 was re-numbered as H.M.O.P.No.87 of 2018 on the file of the Subordinate Court, Kallakurichi. Thereafter, the petitioner filed the present Transfer Civil Miscellaneous Petition for further transfer of the same H.M.O.P.

11. Accordingly, this Court cannot act according to the parties desire and the present Transfer Civil Miscellaneous Petition filed by the petitioner fails and the same is liable to be dismissed.

12. In the result, the Transfer Civil Miscellaneous Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

To

1. The Presiding Officer, Sub Court, Kallakurichi.

2. The Family Court, Salem

+1cc to Mr.N.A.Ravindran, Advocate SR.No.99594

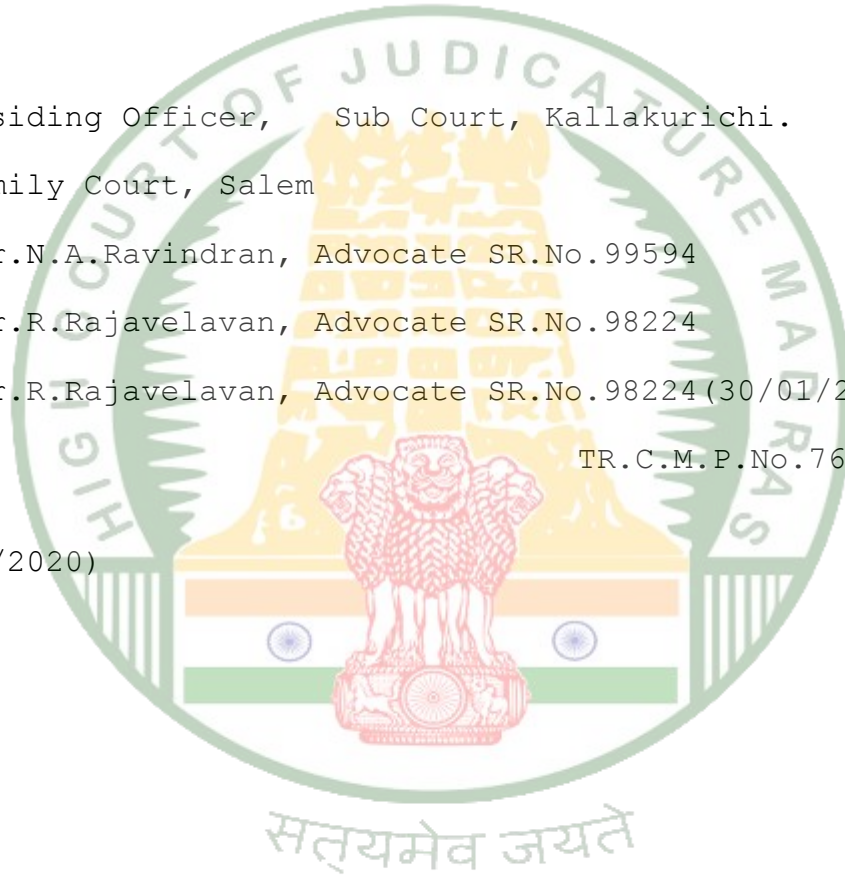
+1cc to Mr.R.Rajavelavan, Advocate SR.No.98224

+1cc to Mr.R.Rajavelavan, Advocate SR.No.98224 (30/01/2020)

TR.C.M.P.No.764 of 2019

GJ (CO)

GMV (29/01/2020)



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