

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 30.01.2019

JUDGMENT PRONOUNCED ON :25.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Transfer CMP.No.757 of 2018
and C.M.P.No.18584 of 2018

A.Kalaiselvan ... Petitioner

Vs

J.Srividhya ... Respondent

PRAYER: Transfer Civil Miscellaneous Petition filed under Section 24 of Code of Civil Procedure, to withdraw H.M.O.P.No.147 of 2014 from the file of the learned Principal Subordinate Judge, Kumbakonam, Tanjore District and to transfer the same to the Family court, Chennai.

For Petitioner : Mr.P.Rathnavel

For Respondent : Mrs.D.Kamachi

O R D E R

The petitioner is the respondent in H.M.OP.No.147 of 2017 pending on the file of the learned Principal Subordinate Judge, Kumbakonam, Tanjavur District. This Transfer Civil Miscellaneous Petition has been filed by the petitioner under Section 24 of Civil Procedure Code, seeking the relief to withdraw the above said H.M.O.P.No.147 of 2017 from the file of the learned Principal Subordinate Judge, Kumbakonam and to transfer the same to the file of the learned Judge, Family Court, Chennai.

2. Petitioner is the husband and respondent is the wife. The marriage between the petitioner and the respondent had happened in the year 2000, as per the Hindu Rites and Customs. Due to the wedlock, the respondent gave birth to one female child and as of now, the said child is under the care and custody of the respondent. After the separation from the petitioner, the respondent joined with her parents and stayed at Kumbakonam. Further, she filed an application before the learned Subordinate

Judge, Kumbakonam in H.M.O.P.No.147 of 2014 for annulling the marriage. In the mean time, the petitioner herein filed a suit against the respondent, before the Family Court at Chennai, for the relief of permanent injunction, restraining the respondent from alienating or encumbering the suit property situated at Chennai. Further, based on the complaint given by the respondent, two cases were registered and pending against the petitioner, in which, one case is pending with Mahila Court, Egmore in D.V.C.No.89 of 2017 and another case is pending before the Mahila Court, Chennai in S.C.No.36 of 2018. In the said circumstances only, the petitioner has approached this Court, by way of filing this Transfer Civil Miscellaneous Petition, for the relief as stated in paragraph No.1 of this order.

3. Heard, Mr.P.Rathnavel, learned counsel appearing for the petitioner and Mrs.D.Kamatchi, learned counsel appearing for the respondent.

4. The learned counsel appearing for the petitioner would submit that only for the purpose of harassing the petitioner, the respondent filed a petition before the Subordinate Court, Kumbakonam in H.M.O.P.No.147 of 2014. The learned counsel would further submit that it is very easy to the respondent in attending the Court at Chennai, since two other cases, as afore stated are pending, within the jurisdiction at Chennai. In the said circumstances, the reasons stated by the respondent in her counter affidavit are false one and accordingly, he prayed for allowing this petition.

5. Per contra, the learned counsel appearing for the respondent would contend that the case, now required to be transferred, is pending from 2014 onwards. In respect to the criminal cases pending before the Courts at Chennai, the alleged offences pertaining to that cases had happened at Chennai and hence, both the cases in D.V.C.No.89 of 2017 and S.C.No.36 of 2018 are pending before the Courts within the jurisdiction at Chennai. In otherwise, still now, the respondent is residing at Kumbakonam along with her daughter and her daughter is now aged about 16 years.

6. Now, considering the submissions made on either side, in the petition filed by the petitioner and in the counter affidavit filed by the respondent, both the petitioner and the respondent have made various allegations against each other. Since, the said allegations were pertaining to their matrimonial life, those particulars are not necessary for deciding the issue

involved in this petition. The only issue now arose before this Court is, whether the petitioner has projected sufficient cause for allowing this petition or not.

7. The sole ground now raised by the petitioner is that the respondent is now residing at Chennai and not at Kumbakonam. On the other hand, the said fact is disputed on the side of the respondent and it has been stated that the respondent is now residing at Kumbakonam. But, in support of his claim, the petitioner has not produced any relevant document to show that the respondent is residing now at Chennai. Even though, the cases instituted by the respondent are pending before the criminal Courts at Chennai, since those cases are related to criminal offences, joint trial or simultaneous trial is not necessary for disposing H.M.O.P.147 of 2014, which is now pending before the learned Principal Subordinate Judge, Kumbakonam. More than that, since the cases pertaining to the present petition are pending before the learned Principal Subordinate Judge, Kumbakonam, the personal appearance of the parties before the Court is not mandatory.

8. In view of the above, since the respondent being a lady and also she is residing at Kumbakonam, transferring the proceedings from the file of the learned Principal Subordinate Judge, Kumbakonam to the file of Family Court, Chennai will cause much inconvenience to the respondent. Further more, since the female child is under the care and custody of the respondent and her parents, it is necessary to give some protection to the said child by the respondent.

9. Further more, since the personal appearance of the parties is not mandatory before the Subordinate Court, Kumbakonam, the sole reason stated by the petitioner is not sufficient to allow this petition. Accordingly, in the light of the above discussions, this Transfer Civil Miscellaneous Petition stands dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

sbn

To

1. The Principal Subordinate Judge,
Kumbakonam.

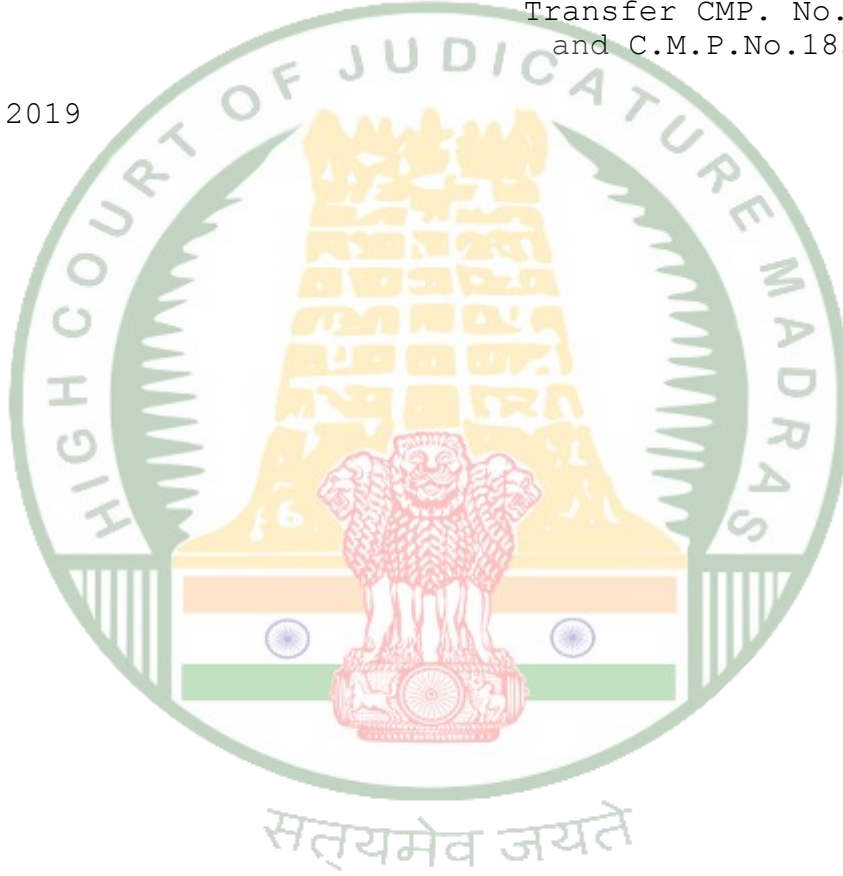
2. The Section Officer,
VR Section, High Court, Madras.

+1 cc to Mr.P.Rathnavel, Advocate Sr.No.18463

+1 cc to M/s.D.Kamachi, Advocate Sr.No.17506

Order in
Transfer CMP. No.757 of 2018
and C.M.P.No.18584 of 2018

RK(CO)
CSL/08.04.2019



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