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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 18.03.2019

PRONOUNCED ON : 04.06.2019

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

TR.C.M.P(MD)No.69 of 2019

and

C.M.P(MD)No.1714 of 2019

Renita ... Petitioner/1st defendant

Vs.

1.Stephen Adaikalraj ... 1st respondent / Plaintiff

2.Sub-Registrar,
Manapparai Taluk Office,
Manapparai,
Trichy - 621 306.

3.State of Tamil Nadu,
rep. by the District Collector,
Trichy District,
Collectorate,
Trichy - 620 001.

... Respondents 2 & 3/
Defendants 2 & 3

PRAYER:- Transfer Civil Miscellaneous Petition filed under Section 24 of the Civil Procedure Code, 1908, praying to withdraw O.S.No.221 of 2018 pending on the file of the District Munsif Court, Manapparai and transfer the same to the file of the Family Court, Trichy.

For petitioner : Mr.K.Prabhakar

For 1st respondent : Mr.A.John Vincent

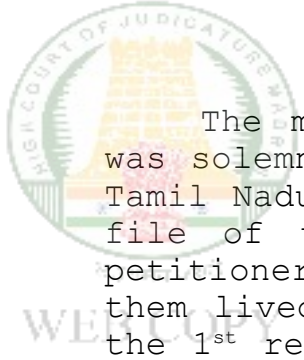
For respondents 2 & 3 : No appearance

ORDER

This Transfer Civil Miscellaneous Petition has been filed by the petitioner / wife seeking transfer of O.S.No.221 of 2018 from the file of the District Munsif Court, Manapparai to the file of the Family Court, Trichy.

<https://hcservices.ecourts.gov.in/hcservices/>

2. The brief facts, which are necessary for the disposal of this petition, are as follows:



The marriage between the petitioner and the first respondent was solemnized on 27.11.2014 and the same was registered under the Tamil Nadu Registration of Marriage Act, 2009 on 28.11.2014 on the file of the 2nd respondent. It was a second marriage to the petitioner as well as the 1st respondent. After marriage, both of them lived happily for some time. Later, due to misunderstanding, the 1st respondent refused to maintain the petitioner. Hence, the petitioner filed M.C.No.46 of 2016 on the file of the Family Court, Trichy and thereafter, filed D.V.C.No.75 of 2016. The 1st respondent entered appearance in the said proceedings and contended that as the marriage has been registered only under the Tamil Nadu Registration of Marriages Act and not under the Special Marriages Act, the marriage is not legally valid. Then, the 1st respondent filed O.S.No.221 of 2018 for declaration that the petitioner is not his legally wedded wife and for cancellation of the registration of marriage, dated 28.11.2014. Seeking to transfer the said suit pending on the file of the District Munsif Court, Manapparai to the file of the Family Court, Trichy, the petitioner has filed this petition.

3. The learned counsel for the petitioner submitted that the Registry of this Court has initially refused to number this petition by relying upon a decision of a learned Single Judge of this Court in **Reshma Begam and others Vs. Syed Nawab Jan and others, reported in 2016 (5) L.W. 385**, but the said decision has been subsequently declared as not a good law by a Division Bench of this Court, by order dated 26.10.2018, in **Tr.C.M.P. (MD) .No.371 of 2017 (Vanaja and another Vs. V.Sureshkumar and others)** and therefore, this petition is maintainable before this Court. He would further submit that since the issues raised in M.C.No.46 of 2016 pending on the file of the Family Court, Trichy and O.S.No.221 of 2018 pending on the file of the District Munsif Court, Manapparai are interrelated to each other, this Court may transfer O.S.No.221 of 2018 filed by the 1st respondent to the file of the Family Court, Trichy and to try along with M.C.No.46 of 2016. He would further submit that as per Section 7 of the Family Courts Act, 1984, such transfer can be made. Thus, he prayed to allow this petition.

4. The learned counsel for the first respondent/husband vehemently opposed to grant the relief stating that the Family Court has no jurisdiction to entertain the suit. However, he would submit that in the event of allowing this petition, this Court may direct the Court below to dispose of both the cases within a stipulated time

5. Though notice served to the respondents 2 and 3, none appeared on behalf of them.

6. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the first respondent and perused the materials available on record.



7. This petition has been filed by the petitioner seeking transfer of the case from the file of the one Court to another situated within the administrative jurisdiction of same District Court. It is seen that initially, the Registry of this Court has refused to number the present transfer petition by relying upon the decision of a learned Single Judge of this Court in **Reshma Begam and others Vs. Syed Nawab Jan and others, reported in 2016 (5) L.W. 385**, wherein it has been held that if any application for transfer is to be filed seeking transfer of the case within the District concerned, the same shall be filed within the same administrative jurisdiction of the District Court concerned and if it falls within the jurisdiction of different District Courts, then the petition for transfer shall be filed before the High Court. Contradicting the said view, a learned Single Judge of this Court had referred the matter to the Larger Bench. However, a Division Bench of this Court, by order dated 26.10.2018, in **Tr.C.M.P. (MD) . No.371 of 2017 (Vanaja and another Vs. V.Sureshkumar and others)** held that the decision rendered in **Reshma Begam** case, cited supra, is not a good law. Therefore, this petition filed by the petitioner under Section 24 of C.P.C. can very well be maintained before this Court.

8. So far as the question of jurisdiction of the Family Court to entertain the suit for declaration of the marriage as null and void pending in O.S.No.227 of 2018 on the file of the District Munsif Court, Manapparai is concerned, this Court is of the view that it would be appropriate to extract the provision of Section 7 (1) of the Family Courts Act, 1984 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 other 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 purposes 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.

Explanation.-The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:-

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial



separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

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(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor."

9. The above provision clearly says that the Family Court has jurisdiction to entertain the suit or proceeding between the parties to a marriage for a decree of nullity of marriage and the suit for declaration as to the validity of a marriage. Therefore, the contention of the respondent, in this regard, is rejected.

10. The main ground on which the learned counsel for the petitioner sought transfer of the suit in O.S.No.221 of 2018 is that the issue involved in both the suit as well as the maintenance case in M.C.No.46 of 2016 pending on the file of the Family Court, Trichy, are interrelated to each other and the stand of the 1st respondent herein is one and the same in both the petitions. The said contention is not disputed by the first respondent. The joint trial would not only save the valuable time of the parties but also the Court. In view of the above, this Court is inclined to allow this Transfer Civil Miscellaneous Petition.

11. In the result, this Transfer Civil Miscellaneous Petition is allowed with the following directions:

i) The learned District Munsif, Manapparai is directed to transmit the entire records in O.S.No.221 of 2018 to the file of the Family Court, Trichy, within a period of two weeks from the date of receipt of copy of this order.

ii) The learned Family Court Judge, Trichy, after obtaining the records on transfer, is directed to tag O.S.No.221 of 2018, along with M.C.No.46 of 2016 pending



on his file and dispose of the same on merits and in accordance with law, as expeditiously as possible, preferably within a period of six months from the date of receipt of records.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AE)

// True Copy //

Sub Assistant Registrar(CS)

gcg

To

- 1.The District Munsif,
Manapparai.
- 2.The Family Court Judge,
Trichy.
- 3.The District Collector,
Trichy District,
Collectorate,
Trichy - 620 001.
- 4.The Sub-Registrar,
Manapparai Taluk Office,
Manapparai,
Trichy - 621 306.

+1CC TO MR.K.PRABHAKAR, Advocate Sr. No. 66853

order made in
TR.C.M.P (MD) No.69 of 2019
04.06.2019

NR(CO)

TR (14.06.2019) 5P 6C