

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Transfer C.M.P.No.54 of 2020

Mohana Seshathri
S/o.Kumarasamy

... Petitioner

vs.

E.Anuja
D/o.K.R.A.Elangovan

...Respondent

Transfer Civil Miscellaneous Petition filed under Section 24 C.P.C. seeking to transfer the proceedings in D.V.O.P.No.45 of 2018 pending on the file of the learned Judicial Magistrate Court at Tambaram to the file of the Sub Court at Tambaram, and that, the learned Sub Court may be directed to conduct joint trial in H.M.O.P.No.715 of 2017 and D.V.O.P.No.45 of 2018.

For Petitioner : Mr.A.Mohan

O R D E R

This Transfer Civil Miscellaneous Petition is filed seeking to transfer the proceedings in D.V.C.No.45 of 2018 pending on the file of the learned Judicial Magistrate Court at Tambaram to the file of the Sub Court at Tambaram, and for a direction to the Sub Court at Tambaram to conduct joint trial in H.M.O.P.No.715 of 2017 and D.V.C.No.45 of 2018.

2. Heard Mr.A.Mohan, learned counsel for the Petitioner. Mr.C.Deivasigamani, learned counsel, accepts notice on behalf of the Respondent. Also heard Mr.N.Manokaran, learned counsel, who assisted this Court, as regards the issue in question.

3. Today, when this matter is taken up 'for admission', this Court posed a question to the learned counsel for the Petitioner that, when the proceedings in D.V.C.No.45 of 2018 are pending before the Criminal Court, whether Section 24 C.P.C. can be invoked to transfer the matter from a Criminal Court to a Civil Court.

4. Learned counsel for the Petitioner submitted that, only Article 227 of the Constitution of India can be invoked for transferring a case from a Criminal Court to a Civil Court.

5. Though, Section 26 of the Domestic Violence Act empowers the parties to approach the Family Court, Civil Court

or Criminal Court, the hurdle is that, no party is empowered to file a case directly before any one of the said Forums.

6. Under the Domestic Violence Act, the aggrieved wife has to make a representation to the Social Welfare Officer, who, after verification, has to lodge a complaint only before the Judicial Magistrate, who takes up the case based on the complaint. Hence, the Social Welfare Officer cannot directly lodge a complaint before the Family Court or Civil Court.

7. Section 26 of the Domestic Violence Act empowers that, violence on the part of the husband can be resolved by various other Courts, and that, powers of the Criminal Court in dealing with offences under the Domestic Violence Act, are only civil in nature.

8. Section 125 Cr.P.C. can also be invoked by the wife before the Criminal Court to claim maintenance, which is civil in nature. In this regard, this Court posed a question to the learned counsel for the parties as to whether Section 24 C.P.C. can be invoked to transfer a case from a Criminal Court to a Civil Court or Family Court, even though the dispute is civil in nature.

9. Mr.A.Mohan, learned counsel for the Petitioner, has mainly relied on a Bombay High Court decision in the case of Minoti Subhash Anand vs. Subhash Manoharlal Anand, reported in 2016 (1) AIR Bom.R (Cri) 247, wherein, it is held that the High Court is empowered to transfer any proceedings even pending before Criminal Court which is subordinate to High Court or over which High Court has power of superintendence to another Criminal Court, which is subordinate to High Court or over which High Court has power of superintendence. Relevant portion of the said decision is extracted hereunder:

"16. A perusal of the Miscellaneous Civil Application filed by the applicant clearly indicates that the applicant has not only invoked the provisions under section 24 of the Code of Civil Procedure, 1908 but has also invoked general and inherent jurisdiction and jurisdiction under Article 227 of the Constitution of India. It is not in dispute between the parties that the reliefs claimed by the applicant before the learned Metropolitan Magistrate under the provisions of Domestic Violence Act can be granted by the Family Court. Section 24 of the Code of Civil Procedure, 1908 in my view will have to be read with the Bombay High Court Appellate Side Rules, 1960 and in particular Rule 6 of Chapter I. A conjoint reading of section 24 of the Code of Civil Procedure, 1908 and

Rule 6 of Chapter I of the Bombay High Court Appellate Side Rules, 1960 clearly indicates that an application for transfer of suits, appeals, criminal cases or other proceedings pending for trial or disposal in any Civil Court or Criminal Court subordinate to the High Court or over which the High Court has power of superintendence, to another Court subordinate to or under the superintendence of the High Court, or to the High Court can be made before the Single Judge. In my view the High Court has power of superintendence over the court of learned Metropolitan Magistrate.

Under Rule 6 of Chapter I, the High Court is empowered to transfer any proceedings even pending before a criminal court which is subordinate to the High Court or over which the High Court has power of superintendence to another criminal court which is subordinate to High Court or over which the High Court has power of superintendence and such court shall have jurisdiction to grant such reliefs on such transfer."

10. That apart, as regards the issue in question, learned counsel for the Petitioner has placed reliance on the following:

(i) a decision of the Apex Court in the case of Hari Vishnu Kamath v. Ahmad Ishaque, AIR 1955 SC 233

"20. We are also of opinion that the Election Tribunals are subject to the superintendence of the High Courts under Article 227 of the Constitution, and that superintendence is both judicial and administrative. That was held by this Court in Waryam Singh v. Amarnath [1954 SCR 565] where it was observed that in this respect Article 227 went further than Section 224 of the Government of India Act, 1935, under which the superintendence was purely administrative, and that it restored the position under Section 107 of the Government of India Act, 1915. It may also be noted that while in a certiorari under Article 226 the High Court can only annul the decision of the Tribunal, it can, under Article 227, do that, and also issue

further directions in the matter. We must accordingly hold that the application of the appellant for a writ of certiorari and for other reliefs was maintainable under Articles 226 and 227 of the Constitution."

(ii) another decision of the Apex Court in the case of *Ranbir Yadav v. State of Bihar*, (1995) 4 SCC 392

"12. Before considering the above contentions of Mr Jethmalani, we may mention that in spite of sufficient opportunities given, the order of transfer passed by the High Court was not produced before us. Needless to say, had it been produced we would have exactly known the facts and circumstances which prompted the High Court to pass that order and clearly apprehended the source of power. However, from the material on record which we have already detailed, it appears that the order was passed by the High Court in its administrative jurisdiction. Under Article 227 of the Constitution of India every High Court has superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction and it is trite that this power of superintendence entitles the High Court to pass orders for administrative exigency and expediency. In the instant case it appears that the High Court had exercised the power of transfer in the context of the petition filed by some of the accused from jail complaining that they could not be accommodated in the courtroom as a result of which some of them had to remain outside. It further appears that the other grievance raised was that the court was so crowded that even clerks of the lawyers were not being allowed to enter the courtroom to carry the briefs. Such a situation was obviously created by the trial of a large number of persons. If in the context of the above facts, the High Court exercised its plenary administrative power to transfer the case to the 5th Court, which, we assume had a bigger and better arrangement to accommodate the accused, lawyers and others connected with the trial no exception can be taken to the same, particularly by those at whose instance and for whose benefit the power was exercised. Mr Jethmalani, however,

contended that administrative power could not be exercised at a stage when judicial power was not only available and operational but was equally effective and efficacious. According to Mr Jethmalani, if the former was not contained, the latter would be nugatory."

(iii) yet another decision of the Apex Court in the case of Surya Dev Rai vs. Ram Chander Rai, (2003) 6 SCC 675

"39. Though we have tried to lay down broad principles and working rules, the fact remains that the parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a strait-jacket formula or rigid rules. Not less than often, the High Court would be faced with a dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where "a stitch in time would save nine". At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the judge."

(iv) a decision of this Court in the case of Selin Raja alias Maria Selin Raj vs. Lawrence alias Lawrence Antonia, 2014 (8) MLJ 400

"4. That apart, Section 26 of the Protection of Women from Domestic Violence Act, 2005, gives ample power to the Family Court to deal with the proceedings initiated by the wife under the Domestic Violence Act.

position, I am of the considered view that the request of the Petitioner has to be acceded to."

(v) a decision of the Madurai Bench of this Court in CrI.O.P. (MD) No.17872 of 2014, dated 06.11.2014 in the case of Rajesh Arockiasamy vs. Suganthi

"7. As per Section 26 of the Protection of Women from Domestic Violence Act, 2005, a Civil Court, Family Court or a Criminal Court have got jurisdiction to try the issue in question. As according to the Petitioners, the complaint has been made against the first Petitioner/husband by wife under Sections 18, 19, 20, 21 and 22 of the Act, it is open to the petitioners to take appropriate steps to transfer the M.C. case to be tried along with I.D.O.P. as the three Courts as stated above are having jurisdiction as per Section 26 of the Protection of Women from Domestic Violence Act, 2005."

11. Mr.N.Manokaran, learned counsel, has assisted this Court on the issue in question, by producing the following:

(i) a Bombay High Court decision in the case of Minoti Subhash Anand vs Subhash Manoharlal Anand, CDJ 2015 BHC 2741

"16. A perusal of the Miscellaneous Civil Application filed by the applicant clearly indicates that the applicant has not only invoked the provisions under section 24 of the Code of Civil Procedure, 1908 but has also invoked general and inherent jurisdiction and jurisdiction under Article 227 of the Constitution of India. It is not in dispute between the parties that the reliefs claimed by the applicant before the learned Metropolitan Magistrate under the provisions of Domestic Violence Act can be granted by the Family Court. Section 24 of the Code of Civil Procedure, 1908 in my view will have to be read with the Bombay High Court Appellate Side Rules, 1960 and in particular Rule 6 of Chapter I. A conjoint reading of section 24 of the Code of Civil Procedure, 1908 and Rule 6 of Chapter I of the Bombay High Court Appellate Side Rules, 1960 clearly indicates that an application for transfer of suits, appeals, criminal cases or other proceedings pending for trial or disposal in any Civil Court or Criminal Court subordinate to the High Court or over which

the High Court has power of superintendence, to another Court subordinate to or under the superintendence of the High Court, or to the High Court can be made before the Single Judge. In my view the High Court has power of superintendence over the court of learned Metropolitan Magistrate. Under Rule 6 of Chapter I, the High Court is empowered to transfer any proceedings even pending before a criminal court which is subordinate to the High Court or over which the High Court has power of superintendence to another criminal court which is subordinate to High Court or over which the High Court has power of superintendence and such court shall have jurisdiction to grant such reliefs on such transfer.

17. In my view there is no inconsistency between the provisions of section 24 of the Code of Civil Procedure and Rule 6 of Chapter I of the Bombay High Court Appellate Side Rules, 1960. Be that as it may, even if there is any inconsistency between section 24 of the Code of Civil Procedure, 1908 and Rule 6 of Chapter I of the Bombay High Court Appellate Side Rules, 1960, in my view the rules of the Bombay High Court Appellate Side Rules, 1960 would prevail over the provisions of Code of Civil Procedure, 1908. There is thus no merit in the submission of the learned counsel for the respondent that this court on civil side cannot pass any order for transfer of the proceedings pending before the learned Metropolitan Magistrate to the Family Court by exercising powers under section 24 of the Code of Civil Procedure which are to be read with Rule 6 of Chapter I of the Bombay High Court Appellate Side Rules, 1960 or that such order can be passed only in a writ petition.

18. The Madras High Court with the similar facts in hand in an application filed under section 24 of the Code of Civil Procedure has transferred the proceedings filed by the wife under the provisions of Domestic Violence Act before the Metropolitan Magistrate in that case to the Family Court in which the proceedings filed by the husband were pending. Madras High Court took a view that under section 26 of

Domestic Violence Act ample powers were given to the Family Court to deal with the proceedings initiated by the wife under the Domestic Violence Act. In my view the facts before the Madras High Court are identical to the facts of this case. I am in respectful agreement with the view taken by the Madras High Court in case of Selin Raja alias Maria Selin Raj (supra)."

(ii) a Karnataka High Court decision in the case of M.V.Rekha vs. Sri Sathya alias Suraj, CDJ 2011 Kar HC 165

"10. If the words contained in Section 24 are to be taken literally, it might be open to argument that the word 'competency' includes both pecuniary and territorial jurisdiction. It is necessary that the Court to which the case is transferred must have territorial jurisdiction, would make it impossible for a High Court to transfer a case pending in the Court of a District Judge to that of a District Judge of another District. Keeping this in mind, the Courts have interpreted words 'competent to try' occurring in Section 24(1) of the CPC referring only to pecuniary jurisdiction. In Ram Das v. Habib Ullah [AIR 1933 ALLAHABAD 178.] , a Division Bench of the Allahabad High Court held that a Court is not competent to try and dispose of a suit if it does not possess both pecuniary and territorial jurisdiction to entertain it. This decision was rendered by the Division Bench on 16.4.1931. However, by a subsequent decision in Kishore Lal v. Balkishan [AIR 1932 ALLAHABAD 660.] (decided on 16.6.1932), Chief Justice Sulaiman gave reasons for reconsidering the previous view and holding that territorial jurisdiction does not come within the meaning of the words 'competent to try' occurring in Section 24 of the CPC and that they must refer only to pecuniary jurisdiction. This decision of the Allahabad High Court has been consistently followed by various High Courts. It is to be noted here that the territorial jurisdiction can be waived because it does not go to the root of the case whereas competence of the Court to try the case goes to the very root of the jurisdiction and refers to the inherent lack of jurisdiction by the Court. In this

connection, it is relevant to note the observations of the Apex Court in Hira Lal Patni v. Kalinath [AIR 1962 SC 199.] , which is as under:

"It is well settled that the objection as to the local jurisdiction of a Court does not stand on the same footing as an objection to the competence of a Court to try case. The competence of a Court to try a case goes to the very root of the jurisdiction, and where it is lacking, it is a case of inherent lack of jurisdiction. On the other hand, an objection as to the local jurisdiction of a Court can be waived."

This judgment of the Apex Court supports the view that the competence to try a case refers to the inherent jurisdiction to try and not for territorial jurisdiction.

11. A Full Bench of the Madras High Court in P. Madhavan Unni v. M. Jayapandia Nadar [AIR 1973 MADRAS 2.] was considering a similar question. It has been held as under:

"Next, to restrict the meaning of the words competent to try or dispose of the same used in Section 24(1)(b)(ii), Civil Procedure Code to territorial jurisdiction over the property of the judgment debtor or the residence qualification of the judgment debtor would lead to grave anomalies and failure of justice. Thus, if the presiding officer of the executing Court happens to be the judgment debtor himself and owns the property in his jurisdiction which is being proceeded against, or if he has taken a prejudicial attitude to one party, and that is urged as a ground for transfer of the execution proceeding, it will be impossible to transfer the execution proceeding to any other subordinate Court, if the restricted meaning above sought to be given to the word competency is to be accepted. It appears to us that the word competency

to restrict the power of the District Court or the High Court under Section 24, Civil Procedure Code to transfer the execution proceeding only to a Court which has territorial competency, or jurisdiction over the place where the judgment debtor resides or works for gain. It has to be given a sufficiently wide interpretation to include each and every Court within the jurisdiction of the superior Court, empowered to deal with such execution application". We respectfully agree with the above observation of the Learned Judge. We consider that the power of transfer, under Section 24 of the Code of a suit, appeal or other proceedings, by a High Court or a District Court to a Court within their respective remedy and no fetters should be placed upon it on grounds of want of territorial jurisdiction of the transferee Court."

14. It is clear from the above discussion that the words 'competent to try' included in Section 24(1) of the Code of Civil Procedure does not refer to territorial jurisdiction. The High Court or the District Judge can transfer a case under this provision to a Court, which need not have territorial jurisdiction over the subject matter of the litigation if the transferee Court is otherwise competent to try it. If that is so, there is no bar for this Court to transfer the case filed by the respondent seeking restitution of conjugal rights in M.C. No. 159/2009 pending on the file of the Principal Family Court at Mysore to the Court of First Additional Family Judge, Bangalore.

15. The cardinal principle for exercise of power under Section 24 of the Code of Civil Procedure is that ends of justice demand the transfer of the suit, appeal or other proceeding. In matrimonial matters, wherever Courts are called upon to consider the plea of transfer, the Courts have to take into consideration the economic soundness of either of the parties, the social strata of the spouses and behavioural pattern, their standard of life antecedent to marriage and subsequent thereon and the circumstances of either of

the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to life. Generally, it is the wife's convenience which must be looked at while considering transfer. Further, when two proceedings in different Courts which raise common question of fact and law and when the decisions are interdependent, it is desirable that they should be tried together by the same Judge so as to avoid multiplicity in trial of the same issues and conflict of decisions (See Smt. Nanda Kishori v. S.B. Shivaprakash [AIR 1993 Kar 87.], Sumita Singh v. Kumar Sanjay [(2001) 10 SCC 41 : AIR 2002 SC 396.] , and Smt. Swarna Gouri v. Sri Vinayak Pujar [ILR 2007 Kar 4561.])".

(iii) yet another decision of the Bombay High Court dated 15.11.2019 made in Misc. Civil Application No.64 of 2019 in the case of Santosh Machindra Mulik vs. Mohini Mithu Choudhari

"3. Learned Counsel for the Respondent opposes the application. Learned Counsel submits that the Family Court has no authority or jurisdiction to consider a domestic violence proceeding filed under Section 12 of the Act. Learned Counsel for the Applicant relies on two judgments of our courts, namely, Sandip Mrinmoy Chakraborty Vs. Reshita Sandip Chakraborty and Minoti Subhash Anand Vs. Subhash Manoharlal Anand in support of his application for transfer. In these judgments, learned Single Judges of our court had allowed transfer of domestic violence proceedings from the files of Judicial Magistrates to Family Courts, relying on Section 26 of the Act. Section 26 provides for relief available under Sections 18, 19, 20, 21 and 22 of that Act being capable of being sought in pending legal proceedings before family courts affecting the aggrieved person and the respondent, whether such proceedings were initiated before or after the commencement of the Act. In response, learned Counsel for the Respondent relies on a Division Bench judgment of Chhattisgarh High Court in case of Smt. Neetu Singh Vs. Sunil Singh. Relying on this judgment, it is submitted

that the option to proceed before a family court in a pending matrimonial proceeding under Section 26 of the Act is available to the aggrieved party, who is the respondent in the present case. It is submitted that if the Respondent does not choose to avail of this option, it cannot be thrust on her.

4. The question in this Misc. Civil Application, which seeks transfer of a proceeding, is not about who has the option to file such proceeding under the Act or to have the same transferred to the Family Court. The question is, whether it is in the interest of justice to have the two proceedings heard together and if the Family Court is the proper court to hear the proceedings together, where it has jurisdiction to consider the reliefs prayed for in the domestic violence proceeding filed before the criminal court. If the two matters have to be heard together, and it is certainly in the interest of justice that they be so heard, they can come only before the Family Court. So far as jurisdiction of that court is concerned, having regard to Section 26 of the Act and the judgments of our courts ruling in favour of such jurisdiction, it cannot possibly be urged that the Family Court lacks such jurisdiction.

5. Learned Counsel for the Respondent further submits that transfer of the criminal proceeding curtails the right of the Respondent-wife to file an appeal, which she ordinarily would have had if the proceeding were to be decided by the criminal court. We are concerned in the present case essentially with the justice of the case in having the two matters heard together. On the one hand, we have a situation where two different courts would be required effectively to consider the same set of circumstances and could have arrived at two different conclusions or, even possibly, conflicting conclusions, and on the other hand, if this situation were to be avoided, and it

appears to be imperative that it be avoided, one particular stage of challenge would be missed. In any event, since from the domestic violence proceeding that may be heard along with the matrimonial proceeding before the Family Court, an appeal would lie to this court, and in that sense, no party can be said to be losing his/her right of appeal, what is lost is a further right of revision. That, however, is no ground to deny transfer of proceedings on the basis of the principle of justice noted above."

(iv) an Apex Court decision in the case of Prem Lala Nahata vs. Chandi Prasad Sikaria, (2007) 2 SCC 551

"18. It cannot be disputed that the court has power to consolidate suits in appropriate cases. Consolidation is a process by which two or more causes or matters are by order of the court combined or united and treated as one cause or matter. The main purpose of consolidation is therefore to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action. The jurisdiction to consolidate arises where there are two or more matters or causes pending in the court and it appears to the court that some common question of law or fact arises in both or all the suits or that the rights to relief claimed in the suits are in respect of or arise out of the same transaction or series of transactions; or that for some other reason it is desirable to make an order consolidating the suits. (See Halsbury's Laws of England, Vol. 37, para 69.) If there is power in the court to consolidate different suits on the basis that it should be desirable to make an order consolidating them or on the basis that some common questions of law or fact arise for decision in them, it cannot certainly be postulated that the trying of a suit defective for misjoinder of parties or causes of action is something that is barred by law. The power to consolidate recognised in the court obviously gives rise to the position that mere misjoinder of parties or causes of action is not something that creates an obstruction even at the threshold for the entertaining of

the suit.

19. It is recognised that the court has wide discretionary power to control the conduct of proceedings where there has been a joinder of causes of action or of parties which may embarrass or delay the trial or is otherwise inconvenient. In that situation, the court may exercise the power either by ordering separate trials of the claims in respect of two or more causes of action included in the same action or by confining the action to some of the causes of action and excluding the others or by ordering the plaintiff or plaintiffs to elect which cause of action is to be proceeded with or which plaintiff should proceed and which should not or by making such other order as may be expedient. (See Halsbury's Laws of England, Vol. 37, para 73.) Surely, when the matter rests with the discretion of the court, it could not be postulated that a suit suffering from such a defect is something that is barred by law. After all, it is the convenience of the trial that is relevant and as the Privy Council has observed in the decision noted earlier, the defendant may not even have an absolute right to contend that such a suit should not be proceeded with."

(v) another Apex Court decision in the case of State Bank of India vs. Ranjan Chemicals Ltd., (2007) 1 SCC 97

"10. A joint trial can be ordered by the court if it appears to it that some common question of law or fact arises in both proceedings or that the right to relief claimed in them are in respect of or arise out of the same transaction or series of transactions or that for some other reason it is desirable to make an order for joint trial. Where the plaintiff in one action is the same person as the defendant in another action, if one action can be ordered to stand as a counterclaim in the consolidated action, a joint trial can be ordered. An order for joint trial is considered to be useful in that, it will save the expenses of two attendances by the counsel and witnesses and the trial Judge will be enabled to try the two actions at the same time and take common evidence in respect of both the claims. If therefore

the claim made by the Company can be tried as a counterclaim by the Debt Recovery Tribunal, the court can order joint trial on the basis of the above considerations. It does not appear to be necessary that all the questions or issues that arise should be common to both actions before a joint trial can be ordered. It will be sufficient if some of the issues are common and some of the evidence to be let in is also common, especially when the two actions arise out of the same transaction or series of transactions.

11. A joint trial is ordered when a court finds that the ordering of such a trial, would avoid separate overlapping evidence being taken in the two causes put in suit and it will be more convenient to try them together in the interests of the parties and in the interests of an effective trial of the causes. This power inheres in the court as an inherent power. It is not possible to accept the argument that every time the court transfers a suit to another court or orders a joint trial, it has to have the consent of the parties. A court has the power in an appropriate case to transfer a suit for being tried with another if the circumstances warranted and justified it. In the light of our conclusion that the claim of the Company in the suit could be considered to be a claim for set-off and a counterclaim within the meaning of Section 19 of the Act, the only question is whether in the interests of justice, convenience of parties and avoidance of multiplicity of proceedings, the suit should be transferred to the Debt Recovery Tribunal for being tried jointly with the application filed by the Bank as a cross-suit. Obviously, the proceedings before the Debt Recovery Tribunal could not be transferred to the civil court since that is a proceeding before a tribunal specially constituted by the Act and the same has to be tried only in the manner provided by that Act and by the Tribunal created by that Act. Therefore, the only other alternative would be to transfer the suit to the Tribunal in case that is found warranted or justified."

the view that, Section 24 C.P.C. may not, as such be applicable to transfer a case from a Criminal Court to a Civil Court, even though the dispute is of civil in nature. The word 'proceeding' appearing in Section 24 C.P.C. can be construed as one pending before Civil forum and not before Criminal Court, even if the proceeding before the Criminal Court is of civil in nature. However, by invoking Article 227 of the Constitution of India, the matter may be transferred from a Criminal Court to a Family Court or any other Court mentioned under 26 of the Domestic Violence Act.

13. In view of the above, this Court, instead of rejecting this Transfer Civil Miscellaneous Petition, directs the Registry to re-number the same as one under Article 227 of the Constitution of India, on receipt of necessary Court fee, and post the matter for hearing before the Court concerned.

14. The assistance rendered by Mr.N.Manokaran, learned counsel, by producing various judgments relevant to the issue in question, is appreciated.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

(aeb)

TO

- 1.The Judicial Magistrate Court,
at Tambaram.
2. The Sub Court at Tambaram.
- 3.The Sub Assistant Registrar,
A.E.Section, High Court of Madras.
Chennai.

Tr.C.M.P.No.54 of 2020

JP(CO)
GN(10/03/2020)

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