

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2020

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THE HONOURABLE MR.JUSTICE T.RAJA

Tr.C.M.P.No.99 of 2020

Mrs.Sudha
W/o M.S.Balamurugan

Petitioner

-VS-

M.S.Balamurugan

Respondent

Transfer Civil Miscellaneous Petition filed under Section 24 of the Civil Procedure Code, to withdraw the F.C.O.P.No.169 of 2019 from the file of the Family Court, Chengalpet and transfer the same to the Sub Court, Vridhachalam, Cuddalore District.

For Petitioner	::	Mr.S.Anburaja
For Respondent	::	Mr.R.Prabakar

ORDER

Heard learned counsel for the parties through video conferencing due to the Covid-19 pandemic.

2. The petitioner, Mrs.Sudha, Wife of Mr.M.S.Balamurugan, the respondent herein has come to this Court seeking transfer of the F.C.O.P.No.169 of 2019 from the file of the Family Court, Chengalpet and transfer the same to the Sub Court,

Vridhachalam.

3. Learned counsel appearing for the petitioner submitted that after the marriage was solemnized between the parties on 6.2.2008 at Sri Balaji Mahal, Salem Road near Kolanchiyappar Temple, Vridhachalam as per the Hindu rites and customs, they were living happily and were also blessed with a male child, namely, Hrishikesh on 8.5.2010, who is now under the custody of the respondent. However, after the marriage, he started showing some cruel behaviour that was objected by the petitioner and the respondent's family also gave trouble without any reason. Finally the petitioner was subjected to both physical and mental harassment by the respondent/husband and her inlaws. Although the respondent is working as Assistant Professor in VIT College, Chennai and earning more than a lakh of rupees, he used to always demand dowry. Therefore, a misunderstanding arose between them and finally the petitioner came to her parental home. In the meanwhile, in July, 2017, the respondent was suffering from thyroid cancer and he also underwent a couple of surgeries and radiation therapy. Now the respondent, his mother and his uncle have snatched away the petitioner's child and chased out the petitioner from the matrimonial home. In the meanwhile, the respondent has filed F.C.O.P.No.169 of 2019 with false and frivolous allegations under Section 13(1)(i-a) of the Hindu Marriage Act for divorce on the ground of cruelty before the

Family Court, Chengalpet. Although the petitioner was working as Assistant Professor in Deivayani Ammal College for Women, Villupuram, now she has resigned from that post also. Therefore, she is unable to undertake a long journey from Vridhachalam to Chengalpet. Hence, the F.C.O.P.No.169 of 2019 pending on the file of the Family Court, Chengalpet be transferred to the Sub Court, Vridhachalam.

4. Opposing the above prayer, learned counsel appearing for the respondent submitted that the transfer civil miscellaneous petition is not legally maintainable. Firstly, when the F.C.O.P.No.169 of 2019 filed by the respondent/husband was taken up, since the petitioner did not appear, she was set ex parte. Now an application has been filed for recalling the ex parte order. It is not known whether the Family Court, Chengalpet would consider the application for restoration in her favour or not. Therefore, without setting aside the ex parte order, the petitioner cannot even take part in the enquiry proceedings. Hence, the prayer for transfer is wholly not maintainable.

5. I find some merits on the submissions made by the learned counsel appearing for the respondent. The reason being that the petitioner was set ex parte in the F.C.O.P.No.169 of 2019 filed by the respondent and the matter has been posted for ex parte evidence. When the petitioner has missed the bus, at this stage, she cannot ask for

transfer. As rightly contended by the learned counsel appearing for the respondent, the application to set aside the ex parte order has not been taken up for hearing, therefore, it is not known whether it will be allowed in favour of the petitioner or not. Secondly, it is also contended by the learned counsel appearing for the petitioner that when the respondent was serving as Assistant Professor in VIT College, Chennai, he was diagnosed with metastatic follicular carcinoma from thyroid gland, a type of cancer by the Apollo Hospitals, Chennai. The discharge summary issued by the Apollo Hospitals, Chennai dated 17.7.2017 clearly shows that the respondent was diagnosed with metastasis follicular carcinoma from thyroid gland. Even the report given by Gleneagles Global Hospitals enclosed at page-5 of the typedset also shows that the respondent is having some health complaint. However, he is recovering from the disease in view of the surgical treatment. Now after coming to know that the respondent has been alive, the petitioner, who has neglected the respondent that he is going to die, has come back and offered the reunion. The respondent has already filed F.C.O.P.No.169 of 2019 on the file of the Family Court, Chengalpet seeking divorce on the ground that the petitioner is having relationship with some other person. Secondly, the contention made by the learned counsel for the petitioner that the petitioner is having very much of love and affection to the son, is also completely bereft of any merit. The reason being that till now, the petitioner has not even taken any step to see her son or made an enquiry as to

the health of the child, leave alone the health of the husband. Moreover, till date, she has not even filed any application seeking custody of the child. She has been happily living and no letter has been addressed to either the respondent or to any one of the family enquiring about the health of the child. Therefore, when the petitioner has miserably neglected and rejected both the husband and child, after noticing that her husband has been diagnosed with metastasis follicular carcinoma from thyroid gland, which is one of a cancer disease, she cannot come to this Court with unclean hands seeking transfer, more particularly, when she has been set ex parte in the F.C.O.P.No.169 of 2019. Therefore, agreeing fully with the argument advanced by the learned counsel for the respondent that the petitioner at no point of time has taken care of the respondent when he was taking treatment and undergone surgery for the above disease and secondly, when she was also set ex parte and her application to set aside the ex parte order has not been allowed, the transfer civil miscellaneous petition is frivolous, not sustainable in law and without any merit. Hence, the transfer civil miscellaneous petition stands dismissed. Consequently, C.M.P.No.3490 of 2020 is also dismissed.

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Speaking/Non speaking order

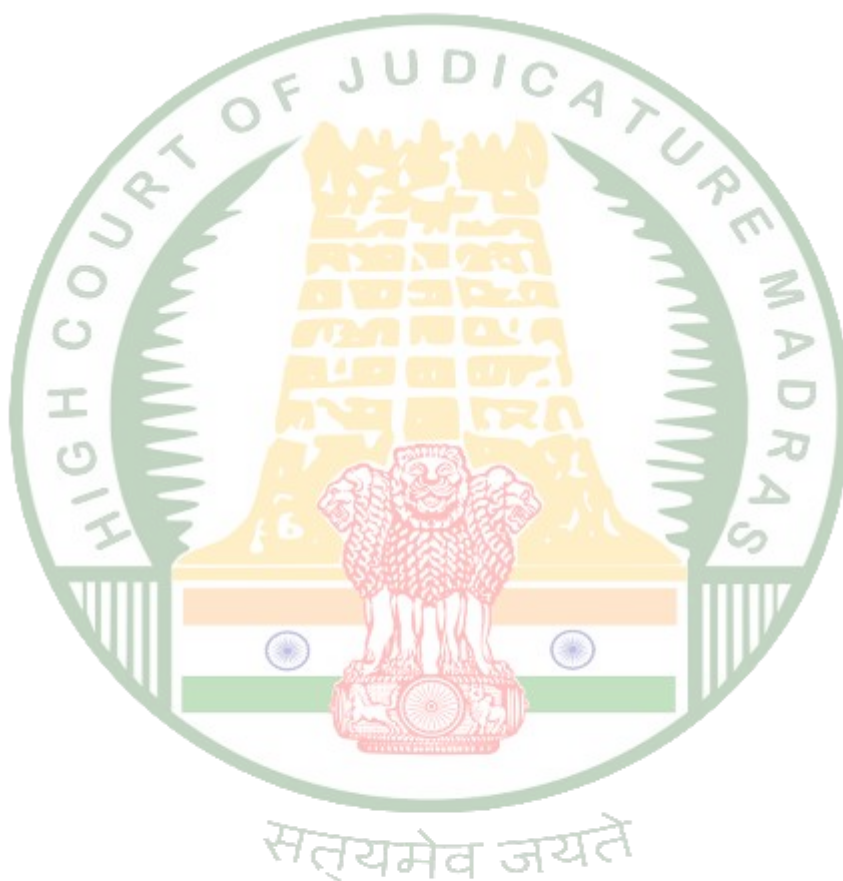
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Index : yes/no

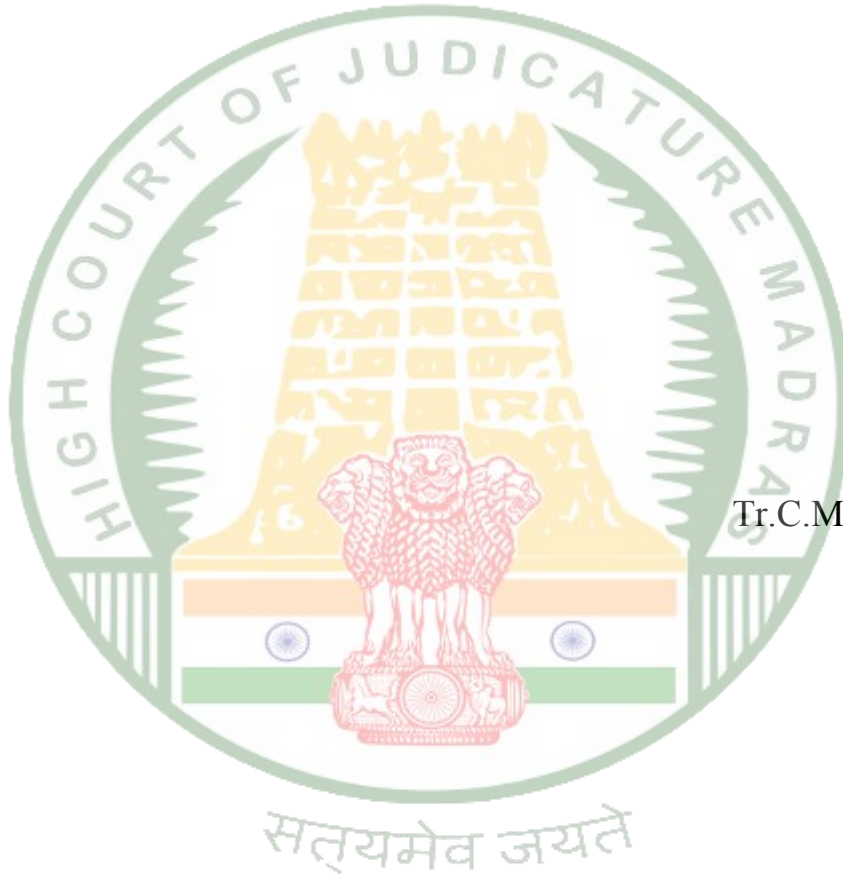
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To

1. The Family Court Judge
Chengalpet



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