

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 23.01.2019

JUDGMENT PRONOUNCED ON : 01.02.2019

CORAM:**THE HONOURABLE MR. JUSTICE R. PONGIAPPAN****Transfer CMP.No.761 of 2018****and C.M.P.No.18644 of 2018**

N.Menaga

Petitioner

Vs

G.R.Naveen Raj

Respondent

PRAYER: Transfer Civil Miscellaneous Petition filed under Section 24 of the Code of the Civil Procedure, to withdraw the H.M.O.P.No.22 of 2018 pending on the file of the Subordinate Court, Avinashi, and transfer the same to the file of the Family Court, at Salem.

For Petitioner : Mr.S.Panneer Selvan

For Respondent : Mr.V.V.Sairam

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ORDER

The petitioner is the respondent in H.M.O.P.No.22 of 2018 pending on the file of the Subordinate Court, Avinashi. She has filed this application under Section 24 of Code of Civil Procedure, to

withdraw H.M.O.P.No.22 of 2018 from the file of the learned Subordinate Court, Avinashi, and to transfer the same to the file of the Family Court at Salem.

2. The petitioner is the wife and the respondent is the husband. The marriage between the petitioner and the respondent was held on 24.05.2002 at Coimbatore, as per the Hindu rites and Customs. After the marriage the petitioner gave birth to two girl children. Now, they were aged about 16 and 14 years respectively. As of now, both the children are studying in school situated in Coimbatore.

3. Initially after arising the difference of opinion between the petitioner and the respondent, the respondent herein filed a case before the Family Court at Coimbatore, for the relief of restitution of conjugal rights. The said petition has been taken into file as H.M.O.P.No.649 of 2015 and subsequently, the same has been withdrawn by the petitioner for the reason best known to them. On the other hand, the petitioner filed an application against the respondent for the relief of Restitution of Conjugal rights in F.C.O.P.No.144 of 2017 before the Family Court, Salem.

4. After filing the above said F.C.O.P.No.144 of 2017 by the petitioner, the respondent has filed one another application against the petitioner before the Family Court at Coimbatore, for the relief of Divorce. The application has been taken on file by the Family Court, Coimbatore, as H.M.O.P.No.147 of 2016. In the mean time, the petitioner has filed an application before the Family Court, Salem in which she has claiming the maintenance from the respondent and the same was numbered as F.C.O.P.No.15 of 2017. Further, one another case has also been filed by the petitioner under the provisions of Domestic violence Act, against the respondent, which was pending before the learned Judicial Magistrate in D.V.C.No.19 of 2017. In the said circumstances, based on the order passed by this Court in Transfer Civil Miscellaneous Petition No.516 of 2017, the case H.M.O.P.No.147 of 2016 pending before the Family Court, Coimbatore, and the case F.C.O.P.No.144 of 2017, pending before the Family Court at Salem, were transferred to the Subordinate Court, Avinashi. After receiving the case records, the learned subordinate Judge, Avinashi assigned with the new case number and proceeded the trial. In the said circumstances, the petitioner is came up with this petition.

5. According to the petitioner the distance between the Subordinate court, Avinashi, and Salem is about 150kms. It is very difficult for her to attend the Court proceedings at Avinashi.

6. The learned Counsel appearing for the petitioner would further contend that, considering the fact that the petitioner is being the wife of the respondent, if the prayer sought by the petition is allowed in her favour. It is very convenient for her to attend the Court proceedings at Family Court, Salem, and hence she prayed for transfer of the case.

7. Per contra, the learned counsel appearing for the respondent would contend that, instead of filing review application the petitioner has approached this Court by way of filing the second application under Section 24 of Civil procedure Code, which is against the provisions of law.

8. Now, on going through the order passed by this Court in Tr.C.M.P.No.398 and 516 of 2017, only after considering the fact that, the petitioner and the respondent are having two litigations in respect to the matrimonial dispute, the said cases have been transferred to the Subordinate Court, Avinashi. It is apparent that the application filed by

the respondent is for the relief of Divorce. On the other hand, the application filed by the petitioner is for the relief of Restitution of Conjugal rights. So far rendering the real justice, joint trial or simultaneous trial is necessary before the same Court. But in this case, the petitioner filed this application for transferring the proceedings from the file of Subordinate Court, Avinashi, which was filed by her for the relief of Restitution of Conjugal rights.

9. Even though, Section 19(3-a) of Hindu Marriage Act, is enacted, after considering the difficulties faced by the women in Matrimonial proceedings, the said beneficial provision has to be utilized only for the necessary circumstances and only after considering all relevant factors.

10. Apart from that, since both the cases are pending before the Subordinate Court, Avinashi, the appearance of the parties is not mandatory for each and every hearing. In otherwise, if the case is transferred to the Family Court, Salem, the appearance of the parties is almost mandatory in nature. If the prayer sought for by the petitioner is ended in her favour definitely, it will cause much inconvenience to the respondent. More over, the purpose of order

passed by this Court in Tr.C.M.P.No.398 and 516 of 2017 will be defeated. So, accordingly I am of the considered view that, the petition filed by the petitioner does not have any merits and accordingly this Transfer Civil Miscellaneous Petition stands dismissed. No cost. Consequently, the Connected Civil Miscellaneous Petition is closed.

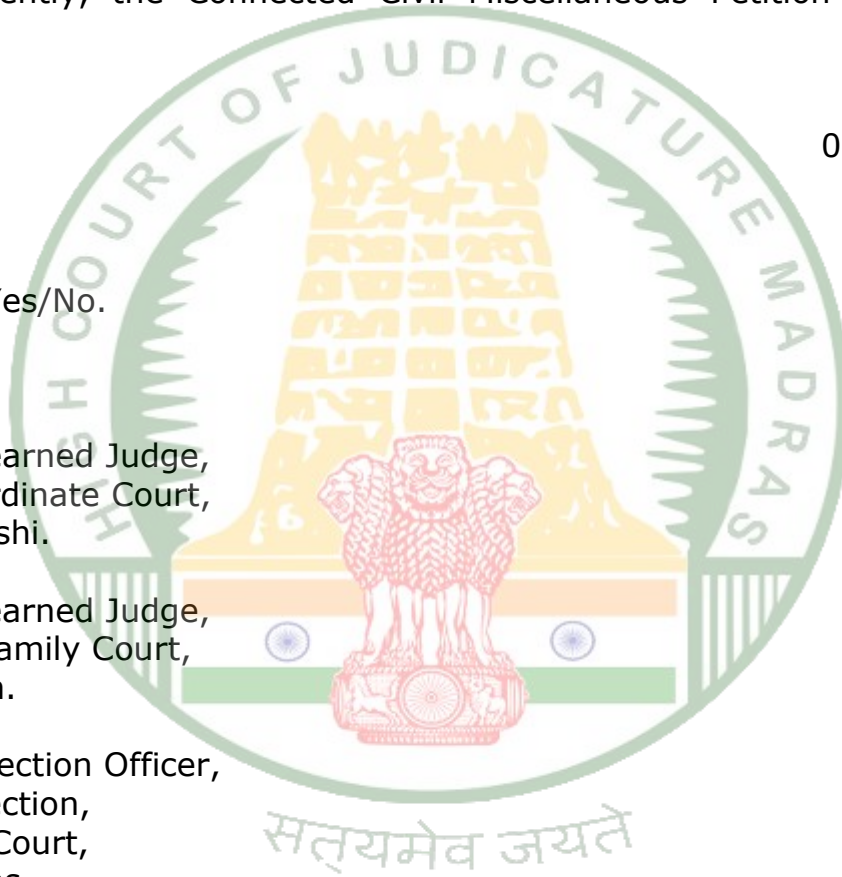
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Index : Yes/No.

To

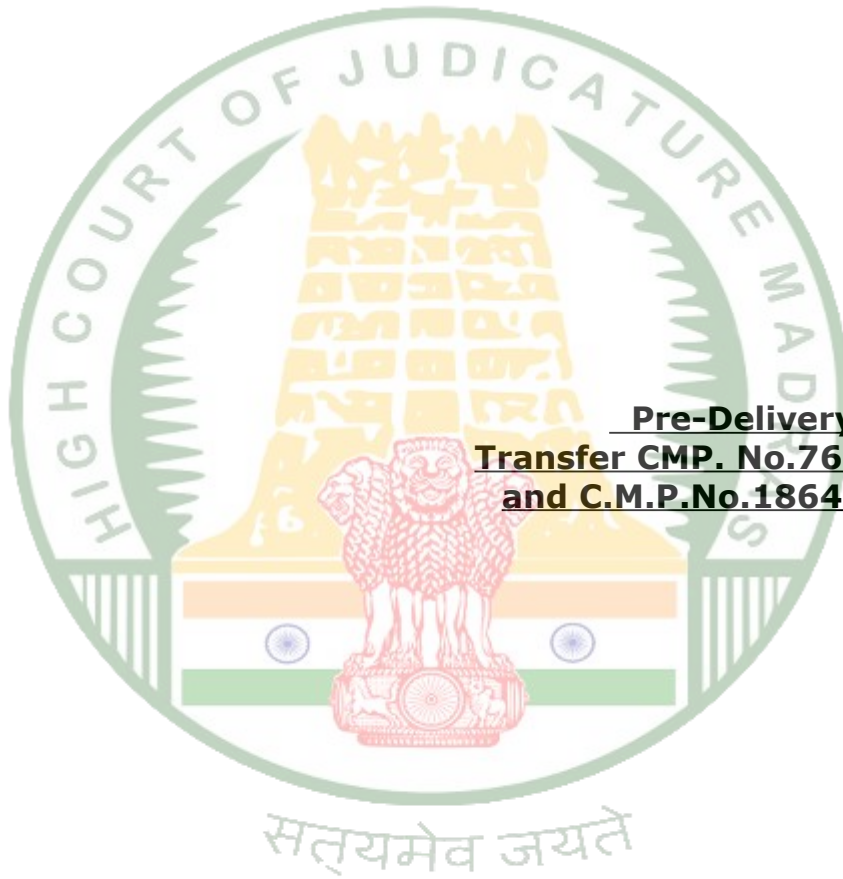
1. The learned Judge,
Subordinate Court,
Avinashi.
2. The learned Judge,
The Family Court,
Salem.
3. The Section Officer,
VR Section,
High Court,
Madras.



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R. PONGIAPPAN.J

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**Pre-Delivery Order in
Transfer CMP. No.761 of 2018
and C.M.P.No.18644 of 2018**

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Date: 01.02.2019