

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2020

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

TR.C.M.P.No.548 of 2019

C.M.P.No.15375 of 2019

R.Mythili

..Appellant

Vs.

R.Satish

... Respondent

PRAYER: Transfer Civil Miscellaneous Petition filed under Section 24 of the Code of Civil Procedure, 1908 to withdraw and transfer the petition in H.M.O.P.No579 of 2019, on the file of Family Court, Madurai to Sub-Court Rasipuram.

For Appellants : Mr.V.Lakshminarayanan

For Respondents : Mr.M.Gurudas

O R D E R

The Transfer Civil Miscellaneous Petition is filed to transfer H.M.O.P.No579 of 2019, on the file of the Family Court, Madurai, to Sub-Court Rasipuram, wherein the petitioner/wife of the respondent has already instituted a maintenance proceedings in M.C.No.2 of 2019, which is pending on the file of the Judicial Magistrate, Rasipuram.

2. The learned counsel for the petitioner states that the marriage between the petitioner and the respondent was solemnized on 02.02.2009, as per the Hindu rites and customs, in Arulmigu Sree Veerakeshwara Kovil Patanam Village, Rasipuram. A girl child was born on 14.03.2016 namely S.Varshika. Unfortunately, the couple lost their child on 03.07.2016. Thereafter, they moved to Madurai wherein the respondent is working. On account of some difference of opinion, the petitioner left her husband and now residing along with her parents at Rasipuram.

3. The learned counsel for the petitioner states that the petitioner is not employed and is now leading her life with the support of her parents. Therefore, it would be difficult to travel from Rasipuram to Madurai which is approximately 400 kms. In respect of H.M.O.P.No.579 of 2019, which is pending before the Family Court, Madurai, the petitioner has to appear on hearing date and it may not be possible for spending money and traveling for such a distance of about 400 kms.

4. The learned counsel appearing on behalf of the respondent opposed the contention by stating that the respondent is working as a Drug Inspector at Madurai and the contention of the respondent is that the petitioner had ill treated him and caused cruelty and voluntarily deserted him and now living separately for the past about four years. Thus, the respondent filed a petition for dissolution of marriage.

5. The learned counsel appearing on behalf of the respondent states that there is a possibility of settlement between the parties and therefore, the matter may be referred to the Mediation Center. However, the learned counsel appearing on behalf of the petitioner states that there is no information with reference to the proposal for settlement and therefore, he is not in a position to ascertain the same. It is always open to the parties to settle the issues amicably. The dispute being related to matrimonial issue, the parties are at liberty to go for conciliation and settle the disputes amicably and opt for reunion. However, for the purpose of such settlement or negotiation, the transfer civil miscellaneous petition need not be kept pending. Under these circumstances, this Court is inclined to transfer the civil miscellaneous petition for passing final orders. Admittedly, both the petitioner and the respondent are living separately. The petitioner is now residing with her parents at Rasipuram. The petition for dissolution of marriage is instituted and now pending before the Family Court, Madurai. The principles with regard to the transfer petitions, more specifically, in matrimonial cases, the Courts are bound to consider the hardships or prejudices, if any to be caused to wife and the High Court of Madras also interpreted Section 19(iii)(a) of the Hindu Marriage Act, 1955 and the following principles are laid down, which is extracted hereunder:

"(i) The Hon'ble Division Bench of the High Court of Madras in W.A.No.1181 of 2009, dated 09.07.2010 has held as follows:-

'21. The domicile or citizenship of the opposite party is immaterial in a case like this. In case the marriage was solemnized under Hindu Law marital relationship is governed by the provisions of the Hindu Marriage Act. Therefore, Section 19 has to be given a purposeful interpretation. It is the residence of the wife, which determines the question of jurisdiction, in case the proceeding was initiated at the instance of the wife.

22. While considering a provision like Section 19 (iii-a) of the Hindu Marriage Act, the objects and reasons which prompted the parliament to incorporate such a provision has also to be taken note of. Sub Clause (iii-a) was inserted in Section 19 with a specific purpose. Experience is the best teacher. The

Government found the difficulties faced by women in the matter of initiation of matrimonial proceedings. The report submitted by the Law Commission as well as National Commission for Women, underlying the need for such amendment so as to enable the women to approach the nearest jurisdictional court to redress their matrimonial grievances, were also taken note of by the Government. Therefore such a beneficial provision meant for the women of our Country should be given a meaningful interpretation by Courts.'

(ii) In yet another case in TR.CMP.Nos.138 and 139 of 2006, dated 30.08.2006, the High Court of Madras has considered the following judgments of the Hon'ble Supreme Court:-

'16. In AIR 2000 SC 3512 (1) (Mona Aresh Goel vs. Aresh Satya Goel), when the wife pleaded that she was unable to bear the traveling expenses and even to travel alone and stay at Bombay, the Supreme Court ordered transfer of proceedings.

In 2000 (10) SCC 304, the Honourable Supreme Court has held that where the petitioner's wife has pleaded lack of money, the same has to be considered.

In 2000 (9) SCC 355, the wife has filed a petition to transfer the proceedings initiated by the husband for divorce, at Bombay. The place of residence of the wife was at Jaipur, Rajasthan. In that case, the petitioner is having a small child and that she pleaded difficulty in going all the way from Jaipur to Bombay to contest the proceedings from time to time. Considering the distance and the difficulties faced by the wife, the Supreme Court has allowed the transfer petition.

In a decision reported in 2005 (12) SCC 395, the wife has sought for transfer of matrimonial proceedings and a divorce petition has been filed by the respondent's husband at Baikunthpur to be transferred to Allahabad, where the petitioner's wife was residing, on the ground that it would be difficult for her to undertake such long distance journey, particularly in circumstances, in which she finds that the proceedings under Section 125 Cr.P.C. was already pending before the Family Court, Allahabad. Considering the difficulties faced by the wife and also the long distance journey, the Honourable Supreme Court was pleased to order transfer of the proceedings to Allahabad."

6. Considering the fact that the petitioner is living with her parents at Rasipuram and not employed elsewhere, this Court is inclined to consider the transfer civil miscellaneous petition. Accordingly, the transfer Civil Miscellaneous Petition stands allowed and H.M.O.P.No.579 OF 2019 now pending before the Family Court, Madurai is transferred to the Sub-

Court, Rasipuram, Nammakkal District. Accordingly, the transfer Civil Miscellaneous petition stands allowed. No costs.

Sd/-  
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

ssb

To

1. The Judge, Family Court,  
Madurai.

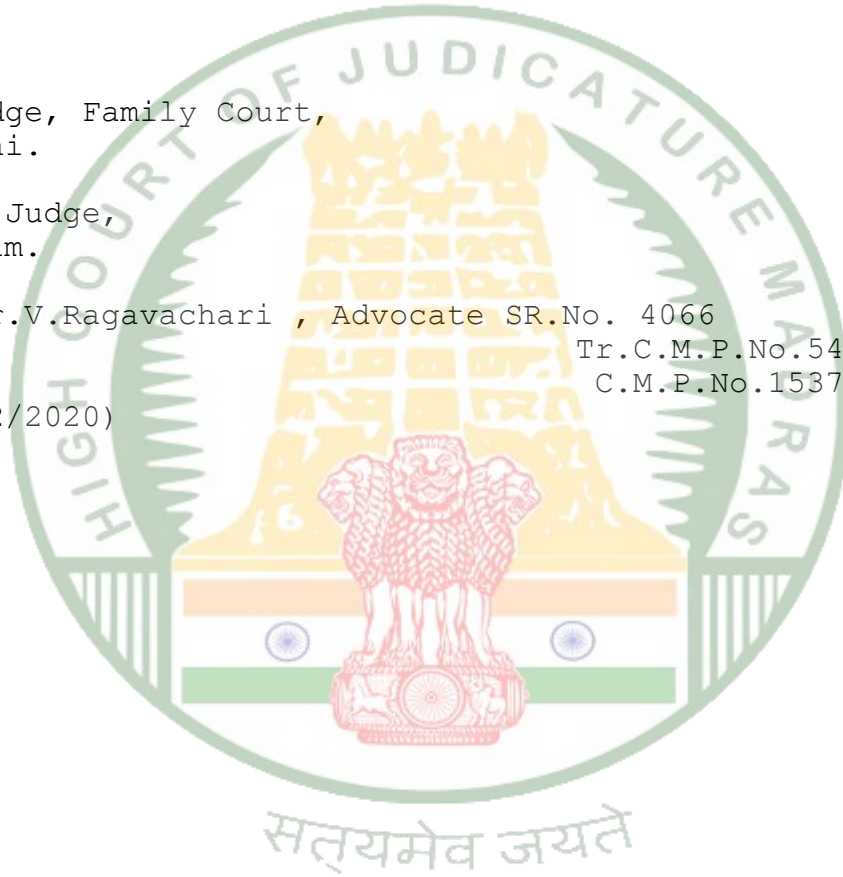
2.The Sub Judge,  
Rasipuram.

+lcc to Mr.V.Ragavachari , Advocate SR.No. 4066

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A.SK(25/02/2020)



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