

C.M.P. No. 23476 of 2019
in
Tr.C.M.P. No. 1091 of 2017

V.M.VELUMANI,J.

The petitioner originally filed Tr.C.M.P. No. 1091 of 2017 to withdraw the case in H.M.O.P. No. 437 of 2017, filed by the respondent, on the file of the Sub Court, Poonamallee and transfer the same to the file of the Principle Sub Court, Sivagangai, to be tried along with D.V.O.P. No. 3 of 2017. This Court, by the order dated 19.04.2018, directed the H.M.O.P. No. 437 of 2017 pending on the file of the Sub Court, Poonamallee to be transferred to the Principle Sub Court, Sivagangai, to be tried along with D.V.O.P. No. 3 of 2017.

2.Now, the petitioner has come out with the present Civil Miscellaneous Petition for modification to modify the order in Tr.C.M.P. No. 1091 of 2017, in such a manner that D.V.O.P. No. 3 of 2017 on the file of the Judicial Magistrate No. 1, Sivagangai to be continued to remain on its file and tried by the Judicial Magistrate No. 1, Sivagangai.

3.The learned counsel for the petitioner submitted that D.V.O.P. No. 3 of 2017 can be tried only by Judicial Magistrate or Family Court and both H.M.O.P. and D.V.O.P. cannot be tried by Sub Court. Further, in the order passed by this Court in Tr.C.M.P. No. 1091 of 2017, there is no direction to the Judicial Magistrate No. 1, Sivagangai for transmission of case bundles which relates to D.V.O.P. No. 3 of 2017 on the file of the Principal Sub Court, Sivagangai. In support of his contentions, the learned counsel appearing for the petitioner produced order dated 15.11.2019 made in Miscellaneous Civil Application No. 64 of 2019 and relied on paragraph Nos. 4 and 5 of the said order, which are extracted hereunder:

"4. The question in this Miscellaneous 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."

4.The learned counsel appearing for the respondent submitted that the respondent has no objection to try both the cases before the Family Court, Sivagangai.

5.In view of the same, paragraph No. 3 of the order of this Court dated 19.04.2018 made in Tr. C.M.P. No. 1091 of 2017 is

modified and the same shall read as follows:

"3. Recording the submission of the learned counsel for the petitioner as well as respondent, the Presiding Officer, Subordinate Court, Poonamallee and Judicial Magistrate No. 1, Sivagangai are directed to transmit all the records pertaining to H.M.O.P. No. 437 of 2017 and D.V.O.P. No. 3 of 2017 respectively to the file of the Family Court, Sivagangai, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such records, the learned Judge, Family Court, Sivagangai is directed to dispose of both the cases viz., H.M.O.P. No. 437 of 2017 and D.V.O.P. No. 3 of 2017 as expeditiously as possible, in any event not later than six months from the date of receipt of copy of this order."

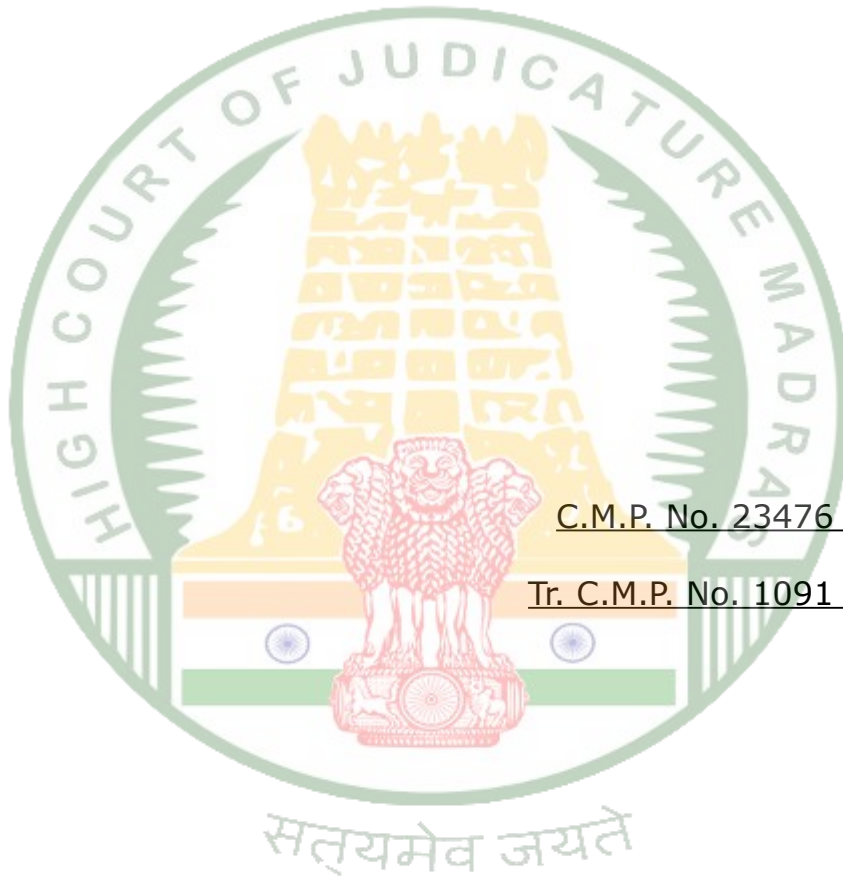
6. Accordingly, this petition is ordered.

29.01.2020

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V.M.VELUMANI, J.

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