

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.O.P.No.33824 of 2019

and

Crl.M.P.Nos.18661 and 18662 of 2019

D.Karthikeyan,
S/o.K.Devan

... Petitioner

versus

1.Divya,
W/o.D.Karthikeyan

2.Minor K.Reitesh,
Rep. by his Natural Guardian/Mother,
Divya,
Both are residing at
Door No.6/291, Hosahatty,
Bikkatty Post, Kundah Taluk,
The Nilgiris.

... Respondents

Prayer: Criminal Original Petition filed under Section 407 Cr.P.C., seeking to withdraw and transfer the M.C.No.17 of 2019 from the file of the learned Judicial Magistrate, Udhagamandalam, Nilgiris, to the Family Court, Coimbatore.

For Petitioner : Mr.B.Kumarasamy

For Respondents : Mr.R.S.Krishnaswamy
for Mr.L.S.M.Hasan Fizal

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O R D E R

This Criminal Original Petition has been filed to withdraw and transfer the M.C.No.17 of 2019 from the file of the learned Judicial Magistrate, Udhagamandalam, Nilgiris, to the file of the Family Court, Coimbatore.

2. The case of the petitioner is that the first respondent is his wife. Their marriage was solemnized on 08.09.2013 as per Hindu rites and customs. After the marriage, due to difference

of opinion, the first respondent left the matrimonial home and is residing with her parents at Ooty. On the other hand, the petitioner got employed at U.S.A.

3. However while at the time the first respondent is in her parents house she got employment in L.I.C. Housing Finance Limited, Salem and therefore, now, she has shifted her residence to Salem. Before got employment, the first respondent herein through her father filed a petition against the petitioner in M.C.No.17 of 2019 on the file of the learned Judicial Magistrate, Udhagamandalam, claiming maintenance for herself and also for the second respondent. Only in the said circumstances, the petitioner is before this Court with the present Original Petition.

4. In respect to the same, the first and foremost contention raised by the learned counsel for the petitioner is that since for the reason that the petitioner herein filed an petition before the Family Court, Coimbatore, for the relief of dissolution of marriage in H.M.O.P.No.166 of 2017, it is necessary for the first respondent to file the maintenance petition only before the Family Court, Coimbatore. In this regard, if the proceedings initiated by the first respondent was continued in the learned Judicial Magistrate, Udhagamandalam, there may be a chance for coming out the conflicting decisions and accordingly, he prayed to allow this petition.

5. Now, on considering the submission made by the learned counsel for the petitioner, it is admitted on either side that the petition filed by the petitioner in H.M.O.P.No.166 of 2017 is on the file of the Family Court, Coimbatore, in which, the petitioner herein prayed to pass a decree for dissolution of marriage. In respect to the said case, though the petitioner filed petition before the said Court for transferring the same to the Sub Court, Ooty, the said petition was dismissed by this Court mentioning the reason that in the above said proceedings trial has commenced. In the said circumstances, it is not at all possible to try the petition mentioned M.C.No.17 of 2019 along with H.M.O.P.No.166 of 2017. Though the first respondent is residing in Salem, now the petition mentioned MC.No.17 of 2019 is posted for the cross examination of P.W.1 and therefore, transferring the said proceedings from the file of the learned Judicial Magistrate, Udhagamandalam, to the Family Court, Coimbatore is unnecessary.

6. Accordingly, I am of the view that the prayer sought by the petitioner cannot be granted at this stage. However, in respect to the petition filed by the petitioner for the relief to dispense with his appearance, this Court came to the positive conclusion for the reason that he is residing in U.S.A., it is

not possible for him to appear before the learned Judicial Magistrate, Udhagamandalam for every hearing. Accordingly, Crl.M.P.No.18662 of 2019 is ordered.

7. With the above observations, the Criminal Original Petition is dismissed. Consequently, connected Crl.M.P.No.18661 of 2019 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

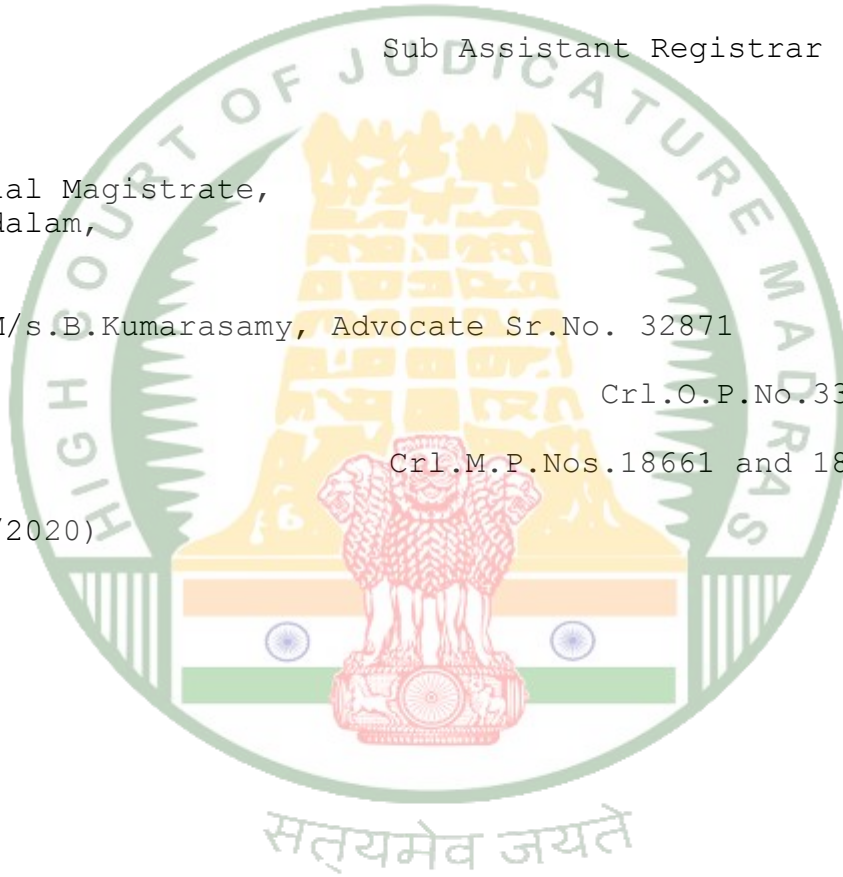
sri
To
The Judicial Magistrate,
Udhagamandalam,
Nilgiris.

+1 cc to M/s.B.Kumarasamy, Advocate Sr.No. 32871

Crl.O.P.No.33824 of 2019
and

Crl.M.P.Nos.18661 and 18662 of 2019

PA(CO)
RMP(06/11/2020)



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