



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

Tr.C.M.P. (MD) No.57 of 2020

and

C.M.P. (MD) No.1017 of 2020

WEB COPY

Anet jeniliya @ Malathi

... Petitioner / Defendant

-vs-

T.P.A.Alphonse Kavin

... Respondent/ Plaintiff

PRAYER: Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure to withdraw and transfer O.S.No.278 of 2019 from the Sub Court, Uthamapalayam to any other competent Sub Court at Madurai.

For Petitioner : Mr.A.John Xavier

For Respondent : Mr.G.Vanchinathan

O R D E R

The present petition is filed seeking for transfer of O.S. 278 of 2019, now pending on the file of the Sub Court, Uthamapalayam to any Subordinate Court at Madurai. The petitioner was formally the wife of the respondent.

2.The case of the petitioner is that the petitioner has given birth to a baby daughter, who is now aged 7 years. Be that as it may, the respondent has filed I.D.O.P.No.53 of 2015 before the Family Court, Madurai for dissolution of his marriage with the petitioner. He has also filed G.W.O.P. No. 5 of 2016 for custody of their daughter and this is also pending on the file of the Family Court, Madurai. The petitioner on her part, has filed M.C.No.74 of 2020, again before the Family Court, Madurai seeking maintenance from the respondent. In the meantime, the respondent had approached this Court with C.R.P(MD).Nos.1379 & 1380 of 2019 for expeditious disposal of I.D.O.P.No.53 of 2015 and G.W.O.P. No. 5 of 2016. Both the petitions were allowed by this Court with a direction to dispose of the cases within 6 months. Be that as it may, since the petitioner has not provided anything for the maintenance of the petitioner and their daughter, the petitioner preferred a complaint before the All Women Police Station and as a counter blast, the respondent has filed a civil suit in O.S.No.278 of 2019 before the Sub Court, Uthamapalayam claiming Rs.10,00,000/- as damages for defamation. The petitioner submitted that already I.D.O.P.No.53 of 2015, G.W.O.P.No.5 of 2016 and M.C.No.74 of 2019 are pending before



the Family Court, Madurai and that the petitioner has no male support and it will be difficult for her to travel on every hearing date of O.S.No.278 of 2019 from Madurai to Uthamapalayam.

3.In the counter filed by the respondent, it is submitted that on 13.03.2020, I.D.O.P.No.53 of 2015 was allowed. However, G.W.O.P.No. 5 of 2016 is still pending before the Family Court, Madurai. He submitted that the cause of action for O.S.No.278 of 2019 is that the petitioner defamed the respondent and seeking damages he has filed the suit.

4.Heard, both sides.

5.The learned counsel for the petitioner submitted that the petitioner has no male support and it will be very difficult for the petitioner to travel alone to Uthamapalayam on every hearing date of O.S.No.278 of 2019. At any rate, the respondent has to come to Madurai to participate in the two litigations that are pending before the Family Court, Madurai. However, It will not be convenient for the petitioner to travel.

6.The learned counsel for the respondent would contend that the respondent has to examine independent witnesses, all of who live within the territorial jurisdiction of Sub Court, Uthamapalayam and it would cause huge inconvenience to them if O.S.No.278 of 2019 is transferred to any Subordinate Court at Madurai. Hence, he opposed to transfer of O.S.No.278 of 2019 from the Sub Court, Uthamapalayam to Sub Court, Madurai.

7.This Court carefully weighed the rival submissions. The fact that witnesses are available within the territorial jurisdiction of a certain court is no ground for retaining the suit in Uthamapalayam. Secondly, Uthamapalayam is not far away from Madurai, where there are at least two cases pending.

8.Therefore, O.S.No.278 of 2019, now pending on the file of the Sub Court, Uthamapalayam is directed to be withdrawn from the said Court and transferred to the II Additional Subordinate Court, Madurai for disposal as per law.

9. In fine, this petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To:

1. The Sub Judge,
Uthamapalayam.

2. The II Additional Subordinate Judge,
Madurai.

Order made in
Tr.C.M.P. (MD) No.57 of 2020
and
C.M.P. (MD) No.1017 of 2020

Dated:
16.07.2020

AP (27.07.2020) 3P-3C