



WEB COPY

*Tr.C.M.P.(MD)Nos.335 of 2019
and 37 of 2020*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.02.2020**

CORAM:

THE HONOURABLE **MR.JUSTICE R.SUBRAMANIAN**

Tr.C.M.P. (MD)Nos.335 of 2019 and 37 of 2020
and
C.M.P. (MD)Nos.666 & 7769 of 2020

Tr.C.M.P. (MD)No.335 of 2019:

A.Natchal ... Petitioner / Respondent
Vs.

V.Chockalingam ... Respondent / Petitioner

PRAYER: This Petition filed under Section 24 of Civil Procedure Code, to withdraw the case in H.M.O.P.No.672 of 2019 on the file of the Family Court, Madurai and transfer the same to Family Court, Coimbatore.

For Petitioner : Mr.D.Senthil

For Respondent : Mr.Thilaga Balasubramaniam

Tr.C.M.P. (MD)No.37 of 2020:

V.Chockalingam ... Petitioner / Respondent
Vs.

A.Natchal ... Respondent / Petitioner

PRAYER: This Petition filed under Section 24 of Civil Procedure Code, to withdraw the case in H.M.O.P.No.1502 of 2019 on the file of the Family Court, Coimbatore and transfer to the file of the Family Court at Madurai and be heard along with H.M.O.P.No.672 of 2019 pending on the file of the Family Court, Madurai simultaneously.

For Petitioner : Mr.Thilaga Balasubramaniam

For Respondent : Mr.D.Senthil



C O M M O N O R D E R

The transfer petition in Tr.C.M.P.(MD)No.335 of 2019 has been filed seeking transfer of H.M.O.P.No.672 of 2019 pending on the file of the Family Court, Madurai, at the instance of the husband seeking declaration that the marriage is a nullity under Section 12(1) of the Hindu Marriage Act, 1955 to the Family Court, Coimbatore. The reason for transfer is mainly on the ground of convenience, as the wife is a resident of Coimbatore. After notice was ordered in this Transfer Civil Miscellaneous Petition by this Court, the wife approached the Family Court at Coimbatore and filed an application in H.M.O.P.No.1502 of 2019 seeking restitution of conjugal rights. On receipt of notice in the said application, the husband has come up with Transfer Petition in Tr.C.M.P.(MD)No.37 of 2020 seeking transfer of H.M.O.P.No.1502 of 2019 to the Family Court, Madurai to be tried along with H.M.O.P.No.672 of 2019. According to the learned counsel for the husband, in view of Section 21-A of the Hindu Marriage Act, 1955, a later instituted proceeding has to be transferred to the Court, where a proceeding formerly instituted is pending and therefore, the petition in H.M.O.P.No.1502 of 2019 pending on the file of the Family Court, Coimbatore should be transferred to the Family Court, Madurai to be tried along with H.M.O.P.No.672 of 2019.

2.This contention is opposed by the learned counsel appearing for the wife on the ground that Section 21-A of the Act will not apply to a proceedings for restitution of conjugal rights. Reading of Section 21-A shows that it deals with only proceedings for divorce and judicial separation and not a proceedings for restitution of conjugal rights.

3.The learned counsel for the petitioner in Tr.C.M.P.(MD)no.37 of 2020 would invite my attention to the Judgment of the learned single Judge of the Madhya Pradesh High Court in **2016 (1) DMC 225 (BALVIR SINGH GURJAR @ RINKU v. NITU)**, wherein it has been held that Section 21-A of the Act would apply even to proceedings for restitution of conjugal rights and a later petition must be transferred to be tried along with petition filed earlier. This Judgment of the Madhya Pradesh High Court has been passed based on the Judgment of Hon'ble Supreme Court in **GUDA VIJAYALAKSHMI v. GUDA RAMACHANDRA SEKHARA SASTRY**, reported in **AIR 1981 SC 1143**. In **GUDA VIJAYALAKSHMI v. GUDA RAMACHANDRA SEKHARA SASTRY**, the Hon'ble Supreme Court considered the argument that in view of Section 21-A of the Hindu Marriage Act, 1955, neither the High Courts nor the Supreme Court can exercise a power under Section 24 and 25 of the Code of Civil Procedure to transfer the proceedings, which do not fall within Section 21-A of the Act. It was this argument that was repelled by the Hon'ble Supreme Court. The Hon'ble Supreme Court



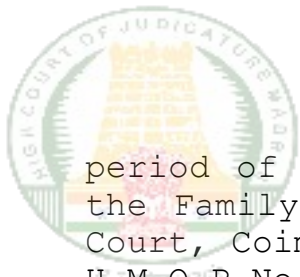
pointed out that the power of the High Courts and the Supreme Court in transfer proceedings is very wide and the same cannot be curtailed by Section 21-A of the Act. Nowhere, did the Supreme Court consider the effect of Section 21-A of the Act, viz-a-viz., a petition filed under Section 9 of the Hindu Marriage Act, 1955, and a petition under Sections 13 or 12 of the said Act. In my considered opinion, the language of Section 21-A of the Act very clear to the effect that the rule enunciated in the said Section that the later proceedings can be transferred to the Court, where the earlier proceedings is pending, would apply only in cases where the proceedings either for divorce or judicial separation or for nullity of marriage and the same cannot be extended to apply to the petition for restitution of conjugal rights filed under Section 9 of the said Act and therefore, with great respect, I am unable to agree with the conclusions of the Madhya Pradesh High Court, wherein it was held that a petition under Section 9 of the Act should also be transferred to a Court, where a previous petition is pending.

4.Adverting to the merits of the case on hand, admittedly, H.M.O.P.No.672 of 2019 has been launched by the husband and it is pending before the Family Court, Madurai. The wife is residing at Coimbatore, which is about 400 kms away. The proceedings before the Family Court require the presence of the parties at every hearing. It will be highly inconvenient for the wife to travel from Coimbatore to Madurai for every hearing before the Family Court. Similarly, if the petition pending at Family Court, Madurai is transferred to Family Court, Coimbatore, the same amount of inconvenient will be caused to the husband, since he will be required to travel to Coimbatore for every hearing, since the proceeding is before the Family Court.

5.With a view to balance the rights of the parties and minimise the inconvenience caused to both of them, I am of the considered opinion that both the Original Petitions viz., H.M.O.P.No.672 of 2019, pending on the file of the Family Court, Madurai and H.M.O.P.No.1502 of 2019 pending on the file of the Family Court, Coimbatore could be transferred to the Principal Sub Court, Coimbatore to be tried and disposed of in accordance with law. The inconvenience caused to both the parties will be minimised, since the proceedings before the Sub Court do not require the presence of the parties for every hearing.

6.The learned counsel for the husband would make a plea for time bound disposal of the Original Petitions.

7.Considering the nature of the allegations made, I am of the considered opinion that the said request is reasonable. Hence the Principal Sub Court, Coimbatore, is directed to dispose of the Original Petitions as expeditiously as possible at any rate within a



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period of nine months from the date of receipt of the papers from the Family Court, Coimbatore and Family Court, Madurai. The Family Court, Coimbatore and Madurai are directed to transmit the papers in H.M.O.P.No.672 of 2019 and H.M.O.P.No.1502 of 2019 respectively to the Principal Sub Court, Coimbatore, forthwith. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2020

Sub Assistant Registrar(CS)

To

- 1.The Judge, Family Court, Coimbatore.
- 2.The Judge, Family Court, Madurai.
- 3.The Principal Subordinate Judge, Coimbatore.

+2 CC to M/s.D.SENTHIL, Advocate (SR-55997 & 5998[F]

+1 CC to M/s.S.THILAGA BALASUBRAMANIAM, Advocate (SR-5965[F]

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