

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 18.03.2021
CORAM
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
Tr.C.M.P.No.79 of 2021
and
C.M.P.No.2759 of 2021

M.Manoah

.. Petitioner

vs.

Kiruba Ponmalar

.. Respondent

PRAYER : Transfer CMP is filed under Section 24 of the Civil Procedure Code, to direct withdrawal of O.P.No.2363 of 2019 from the file of the VII Additional Family Court, Chennai and to transfer the same to the file of the Principal Family Court at Madurai.

For Petitioner : Mr.M.N.S.Mohamed Habeeb Raja

For Respondent : Mr.M.S.Charles

O R D E R

Admittedly, the marriage between the petitioner and the respondent was solemnized on 09.01.2017 as per the Christian Rites and Customs. The petitioner and the respondent are now living separately. The respondent filed O.P.No.2363 of 2019 for Dissolution of Marriage under Section 10(x) of the Divorce Act, 1869. The petitioner/husband filed the present petition for transfer of the case from Chennai to Madurai.

2. The learned counsel for the appellant mainly contended that the VII Additional Family Court at Chennai has no jurisdiction to entertain the petition for Dissolution of Marriage in view of Section 3(3) and Section 10(A) of the Divorce Act. In view of the fact that the VII Additional Family Court, Chennai has no jurisdiction, the O.P is to be transferred to the Principal Family Court, Madurai.

3. In fact, the petition for Divorce is filed by the respondent/wife before the VII Additional Family Court at Chennai. In a petition filed by the respondent, if at all the petitioner is of an opinion that the jurisdiction point is to be raised, the same is to be raised before the Same Court, which entertained the petition and not before the High Court in a

transfer petition, more specifically, by citing the point of jurisdiction, the petitioner/husband cannot seek transfer and it is for him to adjudicate all these points before the Court at Chennai and the petitioner has not stated any other reason for transfer.

4. Admittedly, the respondent/wife is residing at Chennai. The Place of wife is preferable for adjudication of Matrimonial disputes. The respective learned counsels appearing on behalf of the parties further say that there are some negotiations going on for filing of mutual consent petition. However, all these points are to be considered by the parties and an appropriate petition is to be filed. In a transfer petition, High Court need not decide the jurisdiction and maintainability of the petition with reference to the statute. This being the factum established, it is for the petitioner to adjudicate the grounds on merits before the Court, in which, the O.P is pending and in a transfer petition, the said grounds need not be adjudicated.

5. The learned counsel for the respondent/wife further contended that the petitioner/husband is also working at Chennai.

6. The learned counsel for the petitioner made a submission that under Section 24(5) of the Code of Civil Procedure enumerates "a suit or proceedings may be transferred under this Section from a Court, which has no jurisdiction to try it".

7. However in the present case, the matrimonial dispute was entertained by the VII Additional Family Court, Chennai, on the ground that the respondent is residing at Chennai. Even in the present transfer petition filed before this Court, the petitioner filed an affidavit and in the first paragraph of the affidavit, the petitioner himself has admitted that now he has temporarily residing at Tower B-1, Flat No.4-B, 'Olympia Grande Apartments', #328, GST Road, Pallavaram, Chennai - 600 043. Thus, both the petitioner and the respondent are having residence at Chennai. Even in the petition filed for Dissolution of Marriage, the respondent/wife has stated that the respondent was subjected to unaccountable acts of cruelty and the place, where the petitioner and the respondent married falls within the jurisdiction of the VII Additional Family Court at Chennai.

8. When a specific averment is made in the petition for dissolution of marriage, based on the said averments, the Family Court entertained the O.P and the same is pending. When these all are the factual aspects, which are narrated both in the O.P as well as in the present Transfer Civil Miscellaneous Petition, the ground raised by the petitioner under Section 24(5) of the C.P.C., cannot be considered as there are factual aspects, which reveals that the petition at Chennai is also maintainable since in the transfer petition itself, the petitioner has stated that he has temporarily residing at Pallavaram, Chennai.

9. As far as the prayer for transfer is concerned, the wife instituted a petition for dissolution of marriage before the VII Additional Family Court, Chennai and the place of the wife is preferable and therefore, this Court is not inclined to transfer the petition. Accordingly, the Transfer Civil Miscellaneous Petition in TR.CMP.No.79 of 2021 stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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To

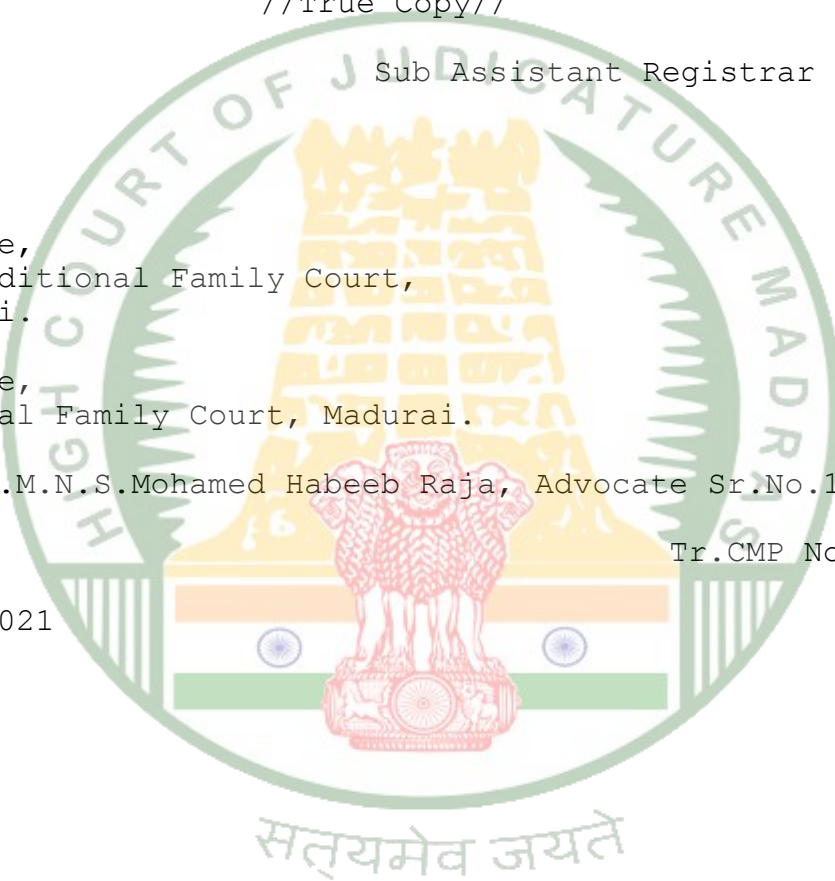
1.The Judge,
VII Additional Family Court,
Chennai.

2.The Judge,
Principal Family Court, Madurai.

+2cc to Mr.M.N.S.Mohamed Habeeb Raja, Advocate Sr.No.18407

Tr.CMP No.79 of 2021

GMI (CO)
NR 17/04/2021



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