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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2021

CORAM:

THE HONOURABLE Mr. JUSTICE S.S.SUNDAR

Tr.C.M.P. Nos.268 & 305 of 2021
and
C.M.P. Nos.7514 & 7082 of 2021

Subbulakshmi @ Lakshmi Priya ... Petitioner in both petitions

Versus

R.Vaidyanathan @ Ganesh .. Respondent in both petitions

Prayer in Tr.C.M.P. No.268 of 2021: Transfer Civil Miscellaneous Petition filed under Section 24 of Civil Procedure Code, to withdraw and transfer of H.M.O.P. No.1116 of 2020 from the file of the Hon'ble Family Court at Thiruppur and the same may be transferred to the Sub Court at Tambaram and may be tried together with H.M.O.P. No.419 of 2020.

Prayer in Tr.C.M.P. No.305 of 2021: Transfer Civil Miscellaneous Petition filed under Section 24 of Civil Procedure Code, to withdraw and transfer of G.W.O.P.No.184 of 2021 from the file of the Hon'ble Family Court, Thiruppur and the same may be transferred to the Sub Court at Tambaram and may be tried together with H.M.O.P.No.419 of 2020.

For Petitioner : Mr. K.M.Anand
(in both petitions)

For Respondent : No appearance
(in both petitions)

C O M M O N O R D E R

Despite notice having been served on respondent as early as on 26.04.2021 and 05.05.2021, no one entered appearance on behalf of the respondent. Since sufficient time has already been given to the respondent, this Court proceeds further to dispose of these petitions on the basis of averments made in this petition. The respondent is set ex-parte.



2. These transfer petitions are filed to withdraw and transfer the proceedings in H.M.O.P. No.1116 of 2020 and G.W.O.P. No.184 of 2021 from the file of the Family Court, Tiruppur to the Sub Court, Tambaram and to be tried along with H.M.O.P. No.419 of 2020, pending on the same file. The petitioner is the wife. The marriage between the petitioner and the respondent husband was solemnized on 02.12.2010 at Chennai and the petitioner gave birth to a female child. The petitioner filed a divorce petition in H.M.O.P. No.419 of 2020 before the Sub Court, Tambaram. The respondent husband filed a petition for restitution of conjugal rights in H.M.O.P. No.1116 of 2020 and a petition for custody of his minor daughter under the provisions of Guardian and Wards Act, 1890, in G.W.O.P. No.184 of 2021 before the Family Court, Tiruppur. Stating that the petitions filed by the petitioner is pending before the Sub Court, Tambaram, the petitioner wife seeks transfer of cases filed by the respondent in H.M.O.P. No.1116 of 2020 and G.W.O.P. No.184 of 2021 before the Family Court, Tiruppur, to the Sub Court, Tambaram and to be tried along with H.M.O.P. No.419 of 2020, pending on the same file.

3. The petition filed by the husband under Guardian and Wards Act, 1890, can be entertained only by the District Court having jurisdiction of the district where the minor daughter is residing. The issues that may arise for consideration in the petition filed under Guardian and Wards Act, are not similar to the issues that arise for consideration in the petitions for restitution of conjugal rights and divorce. This Court and the Hon'ble Supreme Court, in all similar cases, have held that, the convenience of wife is relevant. In the present case, the wife is living with her minor daughter at Tambaram, Chennai. It will be difficult for the petitioner / wife to travel long distance with her minor daughter. The joint trial of H.M.O.P. No.1116 of 2020 and H.M.O.P. No.419 of 2020 will be in the interest of both the parties. Also, it will reduce the time and expenses for the petitioner as well as the respondent.

4. Learned counsel appearing for the petitioner agrees that the matters can be heard and disposed of by Family Court, Chengalpattu and District Court, Chengalpattu and that it will be convenient for both sides.

5. Considering the nature of grievance and the submissions of the learned counsel appearing for the petitioner, this Court is inclined to pass the following order:

H.M.O.P. No.1116 of 2020 and H.M.O.P. No.419 of 2020 are hereby withdrawn from Family Court, Tiruppur and Sub Court, Tambaram, respectively and transferred to Family Court, Chengalpattu, to be tried and disposed of jointly.



G.W.O.P. No.184 of 2021 pending on the file of Family Court, Tiruppur, is hereby withdrawn and transferred to District Court, Chengalpattu.

6. Accordingly, these transfer civil miscellaneous petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Family Court, Tiruppur.
2. The Family Court, Chengalpattu.
3. The Sub Court, Tambaram.
4. The District Court, Chengalpattu.

+2CCs to Mr.K.M.Anand, Advocate, Sr.No.32566/21, 32567/21

Tr.C.M.P. Nos.268 & 305 of 2021

RLD (CO)
K.RK. (09.08.2021)