

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

Tr.C.M.P.No.1022 of 2019

And

C.M.P.No.27374 of 2019

Mr.M.Asger Ali

... Petitioner

vs.

Mrs.Sameena Fathima

.... Respondent

PRAYER : The Tr.CMP is filed under Section 24 of Civil Procedure Code to withdraw O.S.No.249 of 2019 on the file of the V Additional Family Court at Chennai and transfer to the file of the III Additional District Munsif Court at Thirukoilur and to conduct trial along with O.S.No.234 of 2019 on the file of the III Additional District Munsif Court at Thirukoilur.

For Petitioner : M/s.A.Hamitha Banu
For Respondent : Mr.Prakash Gokulany
For Mr.Suchit Anant Palande

O R D E R

The petition for transfer is filed to withdraw O.S.No.249 of 2019 from the V Additional Family Court at Chennai and transfer the same to the III Additional District Munsif Court at Thirukoilur and to conduct trial along with O.S.No.234 of 2019 on the file of the III Additional District Munsif Court at Thirukoilur.

2. The marriage between the petitioner and the respondent was performed on 12.04.2018 as per the Islamic Rites according to Muslim Rites and Customs in the form of Nikkah at Madarsa-E-Dar Uloom, Royapettah.

3. The petitioner and the respondent started their Matrimonial life happily and due to misunderstanding and non-compatibility, they left the Matrimonial home and living separately. The petitioner/husband filed O.S.No.234 of 2019, seeking Dissolution of Marriage. The said suit was instituted before the III Additional District Munsif Court at Thirukoilur. The respondent/wife filed O.S.No.249 of 2019 for Restitution of conjugal rights before the V Additional Family Court, Chennai.

4. This Court is of the considered opinion that the respondent/wife filed a petition for Restitution. Thus, this Court on earlier occasions, referred the matter for Mediation and for Conciliation for resolving the disputes between the spouses. The learned counsel for the respondent made a submission that the mediation was not proceeded with and therefore, the matter may again be referred to the Mediation.

5. This Court is of the considered opinion that it is a Transfer Petition filed by the husband, the residence of the wife may be appropriate place for proceeding with the case. The parties are at liberty to go for Conciliation or Mediation in the main proceedings. However, this Court cannot keep the Transfer Petition pending for long years for the purpose of Mediation or compromise. Such a procedure is unnecessary, in view of the fact that main cases filed by the petitioner for Dissolution of marriage and by the respondent for restitution of conjugal rights are pending before the jurisdictional Court. Thus, the parties are at liberty to proceed with the mediation or conciliation and resolve the disputes in the main case.

6. As far as the Transfer Petition is concerned, this Court is of the considered opinion that the respondent/wife is residing at Chennai and therefore, as stated by the learned counsel for the respondent, it would be difficult for the respondent to transfer to travel to Thirukoilur and conduct the Divorce case filed by the petitioner/husband. Contrarily, the petitioner may contest the case before the V Additional Family Court at Chennai.

7. This being the factum, O.S.No.234 of 2019 now pending before the III Additional District Munsif Court at Thirukoilur stands transferred to the V Additional Family Court, Chennai to be tried along with O.S.No.249 of 2019.

8. Accordingly, the Transfer Civil Miscellaneous Petition in TR.CMP.No.1022 of 2019 stands allowed and O.S.No.234 of 2019 pending on the file of the III Additional District Munsif Court at Thirukoilur is directed to be transferred to the V Additional Family Court, Chennai. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Kak

To

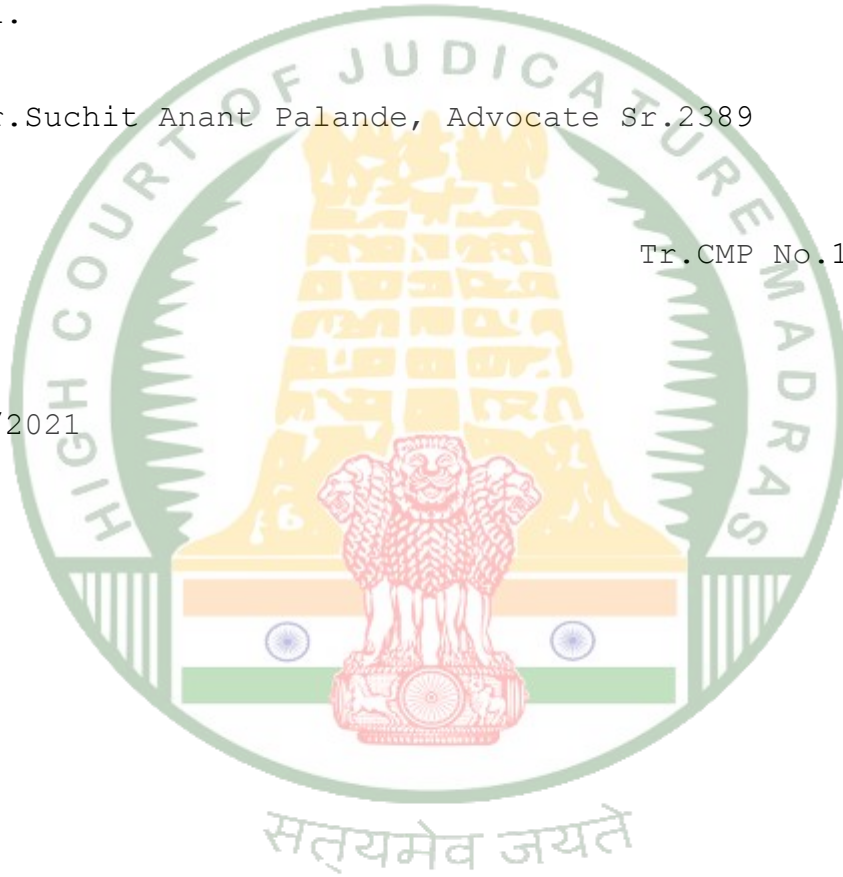
1.The Judge,
III Additional District Munsif,
Thirukoilur.

2.The Judge,
V Additional Family Court,
Chennai.

+1cc to Mr.Suchit Anant Palande, Advocate Sr.2389

Tr.CMP No.1022 of 2019

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srg 09/02/2021



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