



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Tr.C.M.P.(MD) No. 225 of 2021

and

C.M.P(MD)No.4313 of 2021

WEB COPY

P.Sudhalatchumi

... Petitioner/Respondent

-Vs-

R.Sudalai Madasamy

... Respondent/Petitioner

PRAYER: Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw and transfer H.M.O.P.No.10 of 2021 from the file of the learned Subordinate Court, Tiruchengode to the file of the learned Subordinate Court, Virudhunagar.

For Petitioner : Mr.M.Raja Ravi Varma

For Respondent : No appearance

O R D E R

The present Transfer Civil Miscellaneous Petition is filed seeking transfer of H.M.O.P.No.10 of 2021 from file of the learned Subordinate Court, Tiruchengode to the file of the learned Subordinate Court, Virudhunagar.

2.The learned counsel for the petitioner submits that the marriage between the petitioner and the respondent was solemnized on 25.05.2018 at Arulmighu Idumbak Kumarasamy Thirukovil, Iduvampalayam, Tiruppur District, the presence of the family members, friends and relatives as per hindu customs and rites. It was an arranged marriage. Both the family members equally shared the marriage expenses. The parents of the petitioner gave 10 sovereigns of gold jewels to the petitioner and 2 sovereigns of gold jewels to the respondent as sridhana articles. After the marriage, the petitioner and the respondent were living at the matrimonial home at Dindigul. During such time the respondent started exposing a weird behavior and there was some small quarrel and the respondent was having adamant attitude.



3. During November 2018, the parents of the petitioner had invited the petitioner and the respondent to celebrate Thalai Deepavali at her house. The respondent allowed the petitioner to go early and he told that he would join her later. Whiles, when the petitioner was in her parental home, the respondent met with an accident and the petitioner rushed back to the matrimonial home and took care of her husband till his recovery. During such time the petitioner got pregnant and since she was having morning sickness she came back to her mother's house. The parents of the petitioner have called the mother of the respondent to arrange for Valaikattu function. The parents of the respondent did not evince any interest and the valaikattu function was conducted at the petitioner's house, neither the respondent nor his relatives attended the function. Whiles, the petitioner delivered a male child on 04.04.2019. When the petitioner and her parents tried to inform the family of the respondent about the birth of the child, the respondent did not respond to the calls. Meanwhile on 18.08.2019 the mother of the respondent passed away due to severe illness and on knowing about the death of the mother-in-law the petitioner attended the death ceremony at Thiruchengode. Since she had to take care of the child she returned back to her parental home. Whiles to the shock of the petitioner, the respondent filed a petition in HMOP No.10 of 2021 on the file of the Sub Court, Thiruchengode seeking divorce. The petitioner is presently living with her parents at Choolakkarai with her new born child. Despite taking attempts the petitioner is unable to contact the respondent over phone. The respondent is not taking care of the petitioner and the child and the petitioner finds it very difficult to travel to Tiruchengode from Choolakkarai, her parental home. The parents of the petitioner are daily wage employees and they are also unable to accompany the petitioner.

4. The learned counsel for the petitioner further submits that the baby is two years old. Hence, it is very difficult to travel from Virudhunagar to Tiruchengode. The petitioner is under depression because of the attitude of the respondent and the petitioner has to be accompanied by her parents for each hearing before the Court. The parents of the petitioner are daily coolie. Hence, if they accompany with the petitioner, they may not run the family in a peaceful manner.

5. The learned counsel would further submit that in similar circumstances, the Hon'ble Apex Court taking into consideration the convenience and the comparative hardship faced by the petitioner/wife had directed to transfer the cases to be tried in Courts near to the petitioner. Thereby, he seeks for transfer.

6. Though the respondent has been served and name being printed in the cause list, none appears on behalf of the respondent.



7.The Hon'ble Apex Court in the case of **Vaishali Shridhar Jagtap.vs. Shridhar Vishwanath Jagtap** reported in (2016) 14 SCC 356 has held that **while deciding the transfer of matrimonial proceedings comparative hardship faced by the wife has to be taken into account.** Further in the case of **Amitha Shah vs- Virendar Lal Shah**, the Hon'ble Supreme Court reported in (2003)10 SCC 609 has held that **the convenience of the wife and moreso of the child must be taken into account while deciding the petition for transfer.**

8.Considering the facts and circumstances of the case and also considering the submission made by the learned counsel for the petitioner, H.M.O.P. No.10 of 2021 is withdrawn from the file of learned Subordinate Court, Tiruchengode and transferred to the file of the learned Subordinate Court, Virudhunagar, for disposal as per law. The learned Sub Judge, Tiruchengode, is directed to transmit the papers to the file of the learned Subordinate Court, Virudhunagar, forthwith. The learned Sub Judge, Virudhunagar, is directed to dispose transferred H.M.O.P. No.10 of 2021 on merits and in accordance with law as expeditiously as possible.

9.In the result, this Transfer Civil Miscellaneous Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To:

1.The Subordinate Judge,
Tiruchengode.

2.The Sub Judge,
Virudhunagar.

Tr.C.M.P. (MD) No. 225 of 2021
09.09.2021

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