



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.72 of 2019

and

C.M.P (MD) No.1736 of 2019

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M.Seethalakshmi

... Petitioner / 1st Respondent

-Vs-

1.S.Muthukrishnan

... 1st Respondent / Petitioner

2.Rajesh Kanna

... 2nd Respondent / 2nd Respondent

PRAYER: Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw the proceedings in H.M.O.P.No.576 of 2018 on the file of the learned II Family Court at Chennai and to transfer the same to the file of the learned Sub Court, Tiruchendur, Thoothukudi District.

For Petitioner : Mr.M.Jegadeesh Pandian

For Respondent : No appearance

O R D E R

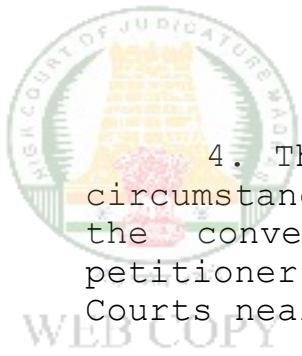
The present Transfer Civil Miscellaneous Petition is filed seeking transfer of H.M.O.P.No.576 of 2018 from file of the learned II Family Court at Chennai to the file of the learned Sub Court, Tiruchendur, Thoothukudi District.

2. The learned counsel for the petitioner would submit that the petitioner and the first respondent are native of Thoothukudi District. The marriage between the petitioner and the first respondent was solemnized on 22.04.1998 at the first respondent house at Paramankurichi in the presence of family members, friends, relatives according to Hindu rites and customs. At the time of marriage due to the demand made by the first respondent family, the parents of the petitioner has given 15 sovereigns of gold jewels, house hold articles worth about Rs. 1,50,000/- to the first respondent. After marriage the petitioner and the first respondent were living together at the matrimonial home at Paramankurichi and the petitioner gave birth to the female child by name Bhuvaneswari on 24.05.2003. Later the first respondent got into the habit of consuming liquor and there was frequent quarrels between them and the petitioner was unable



to tolerate the activities of the first respondent. Thereafter the petitioner again became pregnant and gave birth to a male child on 30.03.2006. The first respondent did not stop the drinking habit and become alcoholic and started suspecting the fidelity of the petitioner stating that the petitioner was having relationship with the second respondent. Since the first respondent did not take care of the petitioner and the child, she went to Chennai to work as labour. The first respondent followed her to Chennai and even there he quarrelled with her and assaulted her, thereby the petitioner was forced to give complaint before the All Women Police Station, Vadapalani, Chennai. During enquiry the police advised the first respondent not to quarrel with the petitioner and later the enquiry was closed. While so, when the first respondent was at Chennai he developed illegal intimacy with the one Rajeswari and when it was questioned by the petitioner, the first respondent assaulted her and continuously harassed her. Unable to bear the harassment the petitioner returned to her native place and she is living with her parents for the past three years. Since the first respondent did not take care of the petitioner and the children and did not pay any maintenance, the petitioner has also filed complaint before the All Women Police Station, Tiruchendur and she has also filed petition under Section 125 of Cr.P.C claiming maintenance and the same is also pending on the file of the learned Judicial Magistrate, Tiruchendur in M.C.No.1 of 2018. After receipt of the notice in the maintenance case, the first respondent has filed divorce petition before the learned II Family Court, Chennai and it is pending in HMOP No.576 of 2018. The learned counsel for the petitioner would submit that petitioner and the first respondent are natives of Thoothukudi District. The first respondent in order to avoid payment of maintenance and cause hardship to the petitioner has filed the divorce petition before the Family Court at Chennai. Presently the petitioner is without job and she is under the care and custody of her aged parents. The first respondent is also not maintaining her and she is also unable to meet out the travel expenses from Tiruchendur to Chennai. The petitioner almost has to travel more than 700km to Chennai and she has nobody to escort her and there is nobody to take care of her at Chennai. The first respondent's native place is at Tiruchendur and his relatives are in Tiruchendur. Further the petitioner also apprehends humiliation and torture at the hands of the first respondent if she goes to Chennai.

3.The learned counsel for the petitioner further submits that the petitioner is under the care and custody of the aged parents and she is having two children and she is not having any relative in Chennai. Hence, it is difficult for the petitioner to travel from Tiruchendur to Chennai. The first respondent has filed the divorce petition to harass the petitioner.



4. 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.

5. Though the respondents have been served and their names have been printed in the cause list, none appears on behalf of the respondents.

6. 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***.

7. 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.576 of 2018 is withdrawn from the file of learned II Family Court at Chennai and transferred to the file of the learned Sub Court, Tiruchendur, Thoothukudi District, for disposal as per law. The learned II Family Judge, Chennai, is directed to transmit the papers to the file of the learned Sub Court, Tiruchendur, Thoothukudi District, forthwith. The learned Sub Judge, Tiruchendur, Thoothukudi, is directed to dispose transferred H.M.O.P. No.576 of 2018 along with M.C.No.1 of 2018 on merits and in accordance with law as expeditiously as possible.

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

Sd/-

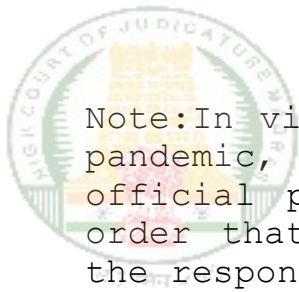
Assistant Registrar (CS II)

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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.

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To:

1. The II Family Court,
Chennai.
2. The Sub Court,
Tiruchendur,
Thoothukudi District.

Tr.C.M.P. (MD) No.72 of 2019
09.09.2021

PS (CO)
SB(28.09.2021) 4P 3C