



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Tr.C.M.P. (MD) No. 287 of 2021

and C.M.P (MD) No. 6128 of 2021

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Prasanadevi

... Petitioner/Respondent

-Vs-

Arun Babu

... Respondent/Petitioner

PRAYER: Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, 1908 to withdraw the case on the file of the Family Court, Ariyalur in FCOP. No.82 of 2021 and transfer the same to the Family Court, Madurai.

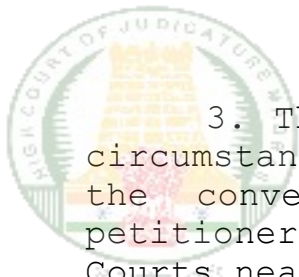
For Petitioner : Mr.M.S.Parthiban

For Respondent : Mr.C.Mayilvahana Rajendran

O R D E R

The present Transfer Civil Miscellaneous Petition is filed seeking transfer of the case in FCOP. No.82 of 2021 from the file of the Family Court, Ariyalur to the file of the Family Court, Madurai.

2.The learned counsel for the petitioner would submit that the petitioner is the wife. The marriage between the petitioner and the respondent was solemnized on 27.01.2021 as per the Hindu rites and customs at Shanmuga Priya Mahal, Thiruvaiyar. After marriage, the petitioner was residing with the respondent at his house in Ariyalur. The petitioner got pregnant whereas the respondent and his family members forcibly aborted the pregnancy. The petitioner escaped from the matrimonial home and she lives in the parental home. The petitioner lodged a complaint before the All Women Police Station, Usilampatti. Meanwhile, the respondent has filed FCOP No.82 of 2021 on the file of the Family Court, Ariyalur for restitution of conjugal rights. The learned counsel for the petitioner would submit that the intention of the respondent is not to join with the petitioner and only in order to harass the petitioner and to dilute the criminal case pending against the respondent, the petition for restitution of conjugal rights has been filed. The learned counsel would further submit that the petitioner has to travel all the way from Usilampatti to Ariyalur and therefore the petitioner has filed the present petition for transfer.



3. 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.

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4. Per contra, the learned counsel appearing for the respondent would submit that the marriage between the petitioner and the respondent took place on 27.01.2021 and due to some misunderstanding the petitioner has left the matrimonial home and thereby the petitioner has filed FCOP No.82 of 2021 seeking restitution of conjugal rights. The learned counsel for the respondent would further submit that due to his preoccupation with business, it will be very difficult for the respondent to appear before the Family Court on every hearing and if this Court inclines to transfer the case, the same may be transferred to Subordinate Court at Usilampatti.

5. 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 must be taken into account while deciding the petition for transfer***.

6. Considering the facts and circumstances of the case and also considering the submission made by both sides, the case in FCOP. No.82 of 2021 is withdrawn from the file of Family Court, Ariyalur and transferred to the file of the Subordinate Court, Usilampatti for disposal as per law. The learned Judge, Family Court, Ariyalur, is directed to transmit the papers to the file of the Sub Court, Usilampatti, forthwith. The learned Subordinate Judge, Usilampatti is directed to dispose FCOP. No.82 of 2021 on merits and in accordance with law as expeditiously as possible.

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

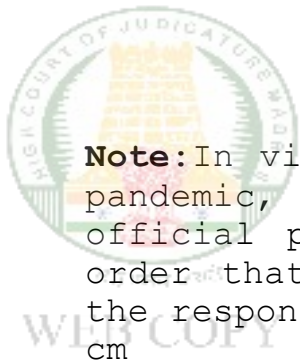
Sd/-

Assistant Registrar (CS II)

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Sub Assistant Registrar (CS)



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 Judge, Family Court, Ariyalur.
- 2.The Subordinate Judge, Usilampatti.

Tr.C.M.P.(MD) No. 287 of 2021
and C.M.P (MD) No.6128 of 2021
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