



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Tr.C.M.P. (MD) No.311 of 2021

and

C.M.P. (MD) No.6666 of 2021

Muthulakshmi

... Petitioner/Respondent

-vs-

C.Bala

... Respondent/Petitioner

PRAYER: Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw the HMOP.No.55 of 2021 on the file of the Sub Court, Thuraiyur and transfer the same to the file of the Sub Court, Muthukulathur.

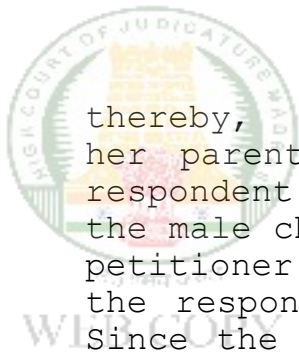
For Petitioner : Mr.K.R.Laxman

For Respondent : No appearance

O R D E R

The present Transfer Civil Miscellaneous Petition is filed to withdraw the petition in HMOP.No.55 of 2021 on the file of the Sub Court, Thuraiyur and transfer the same to the file of the Sub Court, Muthukulathur.

2.The learned counsel appearing for the petitioner would submit that the marriage between the petitioner and the respondent was solemnized on 10.06.2005 at Senjadainathapuram Village, TM Kottai Post, Kadaladi Taluk, Ramanathapuram District as per Hindu Rites and Customs. At the time of marriage, the parents of the petitioner gave 10 sovereigns of gold jewels on Stridhana to the petitioner and 3 sovereigns of gold chain and ring to the respondent along with several other Stridhana properties worth about Rs.1,50,000/-. After the marriage, the petitioner and the respondent were living in the house of the petitioner as joint family. During the said period, the petitioner delivered a girl child in the year 2007 and boy child in the year 2009. Since the respondent was jobless and he did not take any initiative steps to get the job, the petitioner was facing difficulties in the matrimonial home. Later, the respondent went to Trichy searching for a job and the petitioner and her children also went along with him to Trichy. Since the respondent was not having any income the parents of the petitioner gave Rs.1,00,000/- for starting a grocery shop near the residence at Thuraiyur. After sometime, the petitioner came to know that the respondent was having an extra marital relationship with one Thavamani. When it was questioned by the petitioner, he started quarrelling with her and also subjected her to physical abuses and



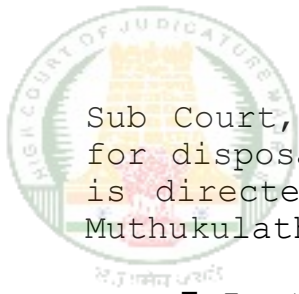
thereby, the respondent along with her children had come back to her parents house and living with them. During such time, the respondent visited their house along with said Thavamani had taken the male child along with him and the female child was left with the petitioner. Subsequently, female child also attended puberty and the respondent has failed to perform the obligations as a father. Since the respondent did not taken care of the petitioner and her minor daughter, she gave a complaint before the All Women Police Station on 09.09.2020. During such time, the respondent appeared and gave an undertaking that he will discontinue his relationship with the said Thavamani. However, he continued the relationship, the petitioner has filed a petition seeking restitution of Conjugal rights in HMOP.No.36 of 2021 before the Sub Court, Muthukulathur. As a counter blast, the respondent has filed HMOP.No.55 of 2021 before the Sub Court, Thuraiyur seeking for divorce.

3.The learned counsel appearing for the petitioner would further submit that the petitioner is now at mercy of her parents and she finds it difficult to travel from Muthukulathur to Thuraiyur, which is about 240 Kilometers. Since the petitioner had questioned the illicit relationship of the respondent, the respondent had also threatened her, if she comes to Thuraiyur. She will be done to death and thereby, the petition has been filed seeking transfer of HMOP.No.55 of 2021 pending on the file of Subordinate Court, Thuraiyur to the Sub Court, Muthukulathur to be tried along with HMOP.No.36 of 2021. He would further submit that in similar circumstances, the Hon'ble Apex Court taking into consideration of 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, she seeks for transfer.

4.Heard the learned counsel for the petitioner. Despite service of notice and name being printed in the cause list, there is no representation for the respondent.

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***, reported in ***(2003)10 SCC 609***, the Hon'ble Supreme Court has held that ***the convenience of the wife and moreso of the child 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 the learned counsel for the petitioner, HMOP No. 55 of 2021 is withdrawn from the file of Family Court, Sub Court, Thuraiyur and transferred to the file of



Sub Court, Muthukulathur to be tried along with HMOP.No. 36 of 2021 for disposal as per law. The learned Subordinate Judge, Thuraiyur, is directed to transmit the papers to the file of the Sub Court, Muthukulathur, forthwith.

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

Sd/-

Assistant Registrar (AE)

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/ /2021

Sub Assistant Registrar(CS)

trp

To:

1. The Sub Judge, Thuraiyur.
2. The Sub Judge, Muthukulathur.

+1 CC to M/s.K.R.LAXMAN, Advocate (SR-30676[F] dated 29/09/2021)

Tr.C.M.P. (MD) No.311 of 2021
and C.M.P. (MD) No.6666 of 2021
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CM(ASO) (CO) /RS (22.10.2021) 3P 4C