



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :08.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Tr.C.M.P. (MD) No.322 of 2021

and

C.M.P. (MD) No.6845 of 2021

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Priyanka

... Petitioner/Respondent

-vs-

Anandhaselvam

... Respondent/Petitioner

PRAYER: Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw the case in HMOP No. 87 of 2021 on the file of the Family Court, Thoothukudi and to transfer the same to the file of the Sub Court, Ambasamuthiram for trial along with HMOP No.77 of 2021.

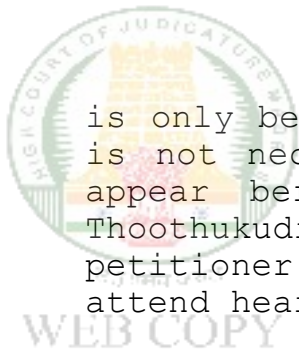
For Petitioner : Mr.D.Venkatesh

For Respondent : Mr.S.Muthumalai Raja

O R D E R

The present Transfer Civil Miscellaneous Petition is filed to withdraw the case in HMOP No. 87 of 2021 on the file of the Family Court, Thoothukudi and to transfer the same to the file of the Sub Court, Ambasamuthiram for trial along with HMOP No.77 of 2021.

2. The learned counsel for the petitioner would submit that the marriage between the petitioner and the respondent was solemnized on 30.03.2020. After marriage the petitioner was residing with the respondent along with her parents-in-law at Thoothukudi. The respondent had changed his attitude after few months and the respondent and his family members started demanding more dowry and when the petitioner's parents expressed their inability the respondent started harassing and torturing her. Unable to bear the torture the petitioner left the matrimonial home and she is presently living at Alwarkurichi, Tenkasi District with her parents. The petitioner has filed application for divorce before the Sub Court, Ambasamutram in HMOP No.77 of 2021 and as a retaliation the respondent has filed the petition for restitution of conjugal rights before the Family Court, Thoothukudi in HMOP No.87 of 2021. The learned counsel would further submit that when the petitioner was at Thoothukudi she had been subjected to harassment and the real intention of the respondent is not to take back the petitioner and the case has been filed before the Family Court only to harass the petitioner. It is just and necessary that both the cases have to be heard together in order to avoid conflicting judgments. The divorce petition filed by the petitioner



is only before the Sub Court and the presence of the respondent is not necessary in all hearings, whereas the petitioner has to appear before the Family Court on all hearing dates. Further Thoothukudi is about 120kms away from Alwarkurichi and the petitioner finds it very difficult to travel a six hours a day to attend hearing.

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.

4. The learned counsel for the respondent vehemently opposed to transfer the petition stating that the respondent has not harassed the petitioner whereas for no reason the petitioner has left the matrimonial home, thereby the respondent has earlier filed HMOP No. 87 of 2021 before the Family Court, Thoothukudi and only after that, the petitioner has filed a petition for divorce before the sub Court, Ambasamudram. The learned counsel for the respondent would submit that the respondent apprehends life threat if he goes to Ambasamudram.

5. Per contra, the learned counsel for the petitioner would submit that the apprehension of the respondent is unfounded and that in the event of any apprehension, the petitioner is at liberty to take appropriate action.

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

7. It is also further seen that since two cases are pending, this Court is of the opinion that present petition has to be allowed to avoid multiplicity of proceedings and conflicting views.

8. Considering the facts and circumstances of the case and also considering the submission made by the learned counsel appearing on either sides, HMOP No. 87 of 2021 is withdrawn from the file of Family Court, Thoothukudi and transferred to the file of Sub Court, Ambasamudram, for disposal as per law. The Family Court, Thoothukudi is directed to transmit the papers to the file of the Sub Court, Ambasamudram forthwith. The Sub Court, Ambasamudram, is directed to try the transferred HMOP No.87 of 2021 along with HMOP No. 77 of 2021 on merits and in accordance with law.



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

Sd/-

Assistant Registrar (CS-III)

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/ /2021

Sub Assistant Registrar (CS)

AAV

To:

1. The Sub Court, Ambasamudram
2. The Family Court, Thoothukudi

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and
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PK (CO)
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