



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 21.10.2021.

CORAM

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THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Transfer C.M.P.(MD) No.356 of 2021  
and  
C.M.P.(MD) No.7199 of 2021

Jeba Benn

... Petitioner/ Respondent

vs.

Simon Livingston

...Respondent/ Petitioner

Transfer C.M.P.(MD) filed under Section 24 of CPC r/w order rule 1(2) of cpc to withdraw the case in I.D.O.P.No.142 of 2019 from the file of the Additional District and Sessions Court, Tenkasi and transfer the same to the Principal District Court, Chengalpattu.

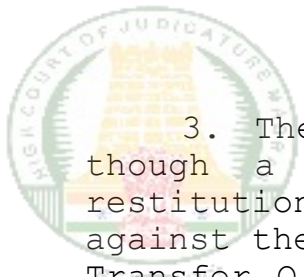
For Appellant : Mr.J.Selvin Rajesh

For Respondent : No appearance.

#### ORDER

The petition has been filed seeking transfer of the case in I.D.O.P.No.142 of 2019 from the file of the Additional District and Sessions Court, Tenkasi to the Principal District Court, Chengalpattu.

2. Learned counsel for the petitioner would submit that the marriage between the petitioner and the respondent was solemnized on 13.9.2018 at Church of Word, Adambakkam, Chennai and subsequently the petitioner's father suffered a stroke and that he was bedridden. The elder sister of the petitioner married and settled elsewhere and at the time of marriage, the respondent agreed that he would come and stay with the petitioner at Chennai, however, later, due to matrimonial discord, the petitioner and the respondent are living separately and the respondent had filed I.D.O.P. No.142 of 2019 before the Additional District and Sessions Court, Tenkasi seeking restitution of conjugal rights.



3. The learned counsel for the petitioner would submit that though a petition had been filed by the respondent seeking restitution of conjugal rights, he had made unethical allegations against the petitioner and the petitioner had earlier filed Transfer O.P.No. 257 of 2021 to transfer the case from the file of the Additional District and Sessions Judge, Tenkasi to the Principal District Court, Chingleput, however, when the matter was taken up for hearing before this court, the respondent undertook that he would withdraw the case and thereby, the petitioner had withdrawn the said Transfer C.M.P. whereas the respondent had failed to keep up the undertaking and that without informing the petitioner, the respondent had left to Switzerland. He would also submit that the petitioner being a lady without anybody else to take care of her, finds it very difficult to travel all the way from Chennai to Tenkasi attend the hearings of the case and thereby, the present petition has been filed seeking transfer of the case to the Principal District Court, Chingleput.

4. Since the notice ordered to be served through court and privately returned as the respondent/addressee was not available/moved, fresh notice was ordered to be effected through substituted service by way of paper publication by order dated 6.10.2021, however, despite such notice, there is no representation for the respondent. Therefore, this court is constrained to proceed with the matter on its own merits.

5. This court is satisfied with the facts and circumstances narrated by the learned counsel for the petitioner to allow the petition seeking transfer of the case.

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. In view of the above, I.D.O.P.No.142 of 2019 is withdrawn from the file of the Additional District and Sessions Court, Tenkasi and transferred to the Principal District Court, Chengalpttu for disposal as per law. The learned Additional District and Sessions Judge, Tenkasi is directed to transmit the papers to the Principal District Court, Chengalpttu forthwith. The Principal District Judge, Chengalpttu is directed to dispose of I.D.O.P.No.142 of 2019 on merits and in accordance with law as expeditiously as possible preferably within a period of six months from the date of receipt of a copy of this order.



8. The Transfer C.M.P. is ordered accordingly. No costs. The connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2021

Sub Assistant Registrar(CS)

ssk.

**Note:** In view of the present lock down owing to COVID 19 pandemic, a web copy of the order may be utilised 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. Additional District and Sessions Judge,  
Tenkasi.
2. Principal District Judge,  
Chengalpttu.

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and  
C.M.P. (MD) No.7199 of 2021  
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RD/PM (02.11.2021) 3P 3C