



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.02.2021

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

TR.C.M.P. (MD)No.257 of 2020

and

C.M.P. (MD)No.5737 of 2020

Pandian : Petitioner/Respondent
Vs.

Kannathal : Respondent/Petitioner

PRAYER:- The petition filed under Section 24 of the Civil Procedure Code, to withdraw the case in H.M.O.P.No.330 of 2019 on the file of the Family Court, Sivagangai and transfer the same to III Additional Subordinate Court, Madurai, for conducting joint trial along with the case in H.M.O.P.No.74 of 2020 pending on the file of the III Additional Subordinate Court, Madurai.

For Petitioner :Ms.A.S.Rajeswari

For Respondent :Mrs.P.Krishnaveni

ORDER

The husband, who is a resident of Chennai, seeks transfer of H.M.O.P.No.330 of 2019 filed by the wife on the file of the Family Court at Sivagangai to the III Additional Subordinate Court at Madurai, to be tried along with H.M.O.P.No.74 of 2020 filed by him seeking restitution of conjugal rights.

2.The wife is admittedly a resident of Nattarasankottai of Kalayarkovil Taluk, Sivagangai District. It is also seen from the records that the OP for restitution of conjugal rights, namely, H.M.O.P.No.74 of 2020 on the file of the III Additional Subordinate Court, Madurai, has been filed after service of notice in H.M.O.P.No.330 of 2019 on the file of the Family Court at Sivagangai.

3.The learned Counsel for the petitioner/husband would submit that it will be very difficult for him to travel from Chennai to Sivagangai for every hearing at the Family Court at Sivagangai. But, the wife can travel to Madurai, for effective hearing only, since the presence of the parties is not mandatory in a proceeding under the Hindu Marriage Act, before the Subordinate Court.



4.Opposing the said request for transfer, the learned Counsel for the respondent/wife would submit that as a wife, she can not be expected to travel to meet the case of the husband. The learned Counsel for the respondent would also submit that the Family Court is meant for hearing family matters and therefore, the OP pending at Family Court cannot be transferred to any other Court.

5.I have considered the rival submissions.

6.Though I am in entire agreement with the submissions of the learned Counsel for the respondent/wife that a lady shall not be expected to travel to face matrimonial proceedings, as a Court, I am also expected to take note of the hardship that would be caused to the husband, who is also a human being, if he is forced to travel from Chennai to Sivagangai for every hearing before the Family Court. Of-course, the Court has to bear in mind the difficulties of the weaker sex. At the same time, a husband cannot be punished, just because, he happened to be a male.

7.In view of the above, I am of the considered opinion that both these proceedings could be transferred to a Subordinate Court, where, the presence of the parties is not required for every hearing. The proceedings in H.M.O.P.No.330 of 2019 and H.M.O.P.No.74 of 2020 are withdrawn from the file of the Family Court at Sivagangai and III Additional Subordinate Court, Madurai, respectively, and transferred to the file of the Subordinate Judge, Sivagangai to be tried and disposed of in accordance with law. By this, both the parties will be saved of the trouble of travelling either to Sivagangai or Madurai for every hearing and they can be represented by Counsel for non effective hearings.

8.Accordingly, this petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)



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To

1.The Judge, Family Court, Sivagangai.

2.The III Additional Subordinate Judge, Madurai.

3.The Subordinate Judge, Sivagangai.

+1 CC to M/S.A.S.RAJESWARI, Advocate (SR-2978[F] dated 02/02/2021)

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02.02.2021

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