



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.02.2021

CORAM

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**

TR.C.M.P. (MD)No.305 of 2020 and

C.M.P. (MD)No.6636 of 2020

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Muthusamy : Petitioner/Respondent

Vs.

Viswaja : Respondent/Petitioner

PRAYER:- The petition filed under Section 24 of the Civil Procedure Code, to withdraw the petition in H.M.O.P.No.220 of 2019 on the file of the Family Court, Sivagangai and transfer to same to the Subordinate court, Sivagangai for having joint trial along with the petition in H.M.O.P.No.2 of 2019 on the file of the Subordinate Court, Sivagangai.

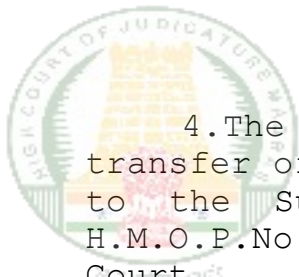
For Petitioner : Mr.D.Nallathambi
For Respondent : Mr.C.Senthil Murugan

ORDER

The husband seeks transfer of H.M.O.P.No.220 of 2019 filed by the wife on the file of the Family Court, Sivagangai, to the Subordinate Court, Sivagangai, to be tried along with H.M.O.P.No.2 of 2019 pending on the file of the Subordinate Court, Sivagangai.

2.The husband originally filed H.M.O.P.No.223 of 2018 on the file of the Subordinate Court, Sivakasi, seeking divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955. The respondent/wife filed TR.C.M.P.(MD)No.62 of 2019 before this Bench and seeking transfer of H.M.O.P.No.223 of 2018 from Subordinate Court, Sivakasi to Family Court, Sivagangai. By order, dated 08.04.2019, this Court allowed the petition and transferred H.M.O.P.No.223 of 2018 to the Subordinate Court, Sivagangai instead of Family Court, as requested by the wife. Thereafter, the said petition was renumbered before the Subordinate Court, Sivagangai as H.M.O.P.No.2 of 2019.

3.After the order of transfer was passed by this Court transferring H.M.O.P.No.23 of 2018 to the Subordinate Court, Sivagangai and knowing about the pendency of the said OP before the Subordinate Court, Sivagangai, the wife filed H.M.O.P.No.220 of 2019 on the file of the Family Court, Sivagangai seeking restitution of conjugal rights and also filed a maintenance case in M.C.No.5 of 2019 before the Family Court, Sivagangai.



4.The husband has now come up with this petition seeking transfer of H.M.O.P.No.220 of 2019 from the Family Court, Sivagangai to the Subordinate Court, Sivagangai to be tried along with H.M.O.P.No.2 of 2019, which is already pending before the said Court.

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5.The learned Counsel for the respondent would submit that the because the maintenance case pending before the Family Court, Sivagangai, the OP should not be transferred.

6.I find that the conduct of the wife in filing a petition for restitution of conjugal rights in a different Court, after having obtained transfer of the divorce petition filed by the husband to the Subordinate Court, Sivagangai, is not in good taste. Hence, H.M.O.P.No.220 of 2019 filed by the wife before the Family Court, Sivagangai is withdrawn and transferred to the Subordinate Court, Sivagangai, to be tried along with H.M.O.P.No.2 of 2019. The transfer will also prevent any chances of there being conflicting judgments in the proceedings for divorce and restitution of conjugal rights. This Transfer Civil Miscellaneous Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

cmr

To

1.The Judge, the Family Court, Sivagangai.

2.The Subordinate Judge, Sivagangai.

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-5522[F] dated 17/02/2021)

TR.C.M.P. (MD)No.305 of 2020

16.02.2021

(SRK)CO

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