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Tr.C.M.P.No.420 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2022

CORAM:

THE HONOURABLE Mr. JUSTICE S.SOUNTHAR

Tr.C.M.P.No.420 of 2022
and CMP No.7833 of 2022

Mrs.P.Yasodha

...Petitioner

.Vs.

Mrs.S.Shanthi Priya

... Respondent

Prayer: Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure to withdraw the suit in O.S.No.70 of 2016 from the file of the I Additional Family Court, Chennai and to transfer the same to the file of the City Civil Court, Chennai.

For Petitioner : Ms.S.Janani

For Respondent : M/s.Anil Relwani

ORDER

The petitioner herein who is the mother-in-law of the respondent filed this Transfer Petition seeking transfer of O.S.No.70 of 2016, pending on the file of I Additional Family Court, Chennai to City Civil Court, Chennai.



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2.The respondent herein, who is the daughter-in-law of the petitioner filed a suit for injunction in OS.No.70 of 2016, on the file of the I Additional Family Court, Chennai as against her late husband and the petitioner herein. While the suit was pending, the husband of the respondent/son of the petitioner passed away. Thereafter, the petitioner has filed this transfer petition on the ground that she is suffering from cancer and hence, it may not be possible for her to attend the hearings at the Family Court. The learned counsel for the petitioner also submitted that after death of the petitioner's son, there is no element of matrimonial dispute and hence, the present suit before the Family Court is not maintainable after deletion of the deceased son from the array of parties.

3.The learned counsel for the respondent resisted the transfer petition on the ground that the medical documents filed in support of the petitioner's plea are all relating to the year 2012 and there is no contemporaneous document to support the case of the petitioner that she is disabled from attending the Court.

4.Heard the arguments of the learned counsel for the petitioner and respondent.



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Perused the documents filed in the typed set of papers.

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5.The petitioner in support of her plea that she is suffering from cancer produced the documents relating to treatment issued by Cancer Institute (WIA), Chennai-20. The close perusal of the said document make it clear that she was admitted in the institute on 04.06.2012 and got discharged on 05.06.2012. Therefore, it only proved that she had taken treatment 10 years ago. The other document filed by the petitioner was issued by Aruna Diabetes Centre, Chennai-94, dated 2.3.2022. The said document only proves that the petitioner is suffering from diabetes and she had taken treatment for keeping the sugar level and blood pressure under check.. Therefore, there is nothing on record to show that the petitioner is disabled to attend the Court hearings. Hence, the first submission made by the learned counsel for the petitioner in support of his plea for transfer is rejected.

6.As far as the second contention that there is no element of matrimonial dispute and therefore, the petition before the Family Court cannot be maintained subsequent to deletion of petitioner's deceased son from array of party is concerned, the said contention cannot be raised in a petition for transfer. The issue relating to jurisdiction of the Court can be raised before the very same Court and hence, the second contention raised by the learned



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counsel for the petitioner cannot be countenanced.

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7.Finding no merits in the arguments and the submissions of the learned counsel for the petitioner, the transfer petition is dismissed as devoid of merits. It is open to the petitioner to file an appropriate application seeking to dispense with her personal appearance before the I Additional Family Court, Chennai. If any such application is filed, it may be considered by the I Additional Family Court, Chennai sympathetically. The Court below is directed to dispose the suit in O.S.No.70 of 2016, within a period of six weeks from the date of receipt of copy of this order.

8.In the result, this Transfer Civil Miscellaneous Petition is dismissed.

No costs. Consequently, connected miscellaneous petition is closed.

12.09.2022

KP

Index: Yes/ No

Speaking Order / Non-Speaking Order



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To

1. I Additional Family Court,
Chennai.
- 2.City Civil Court
Chennai.



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S.SOUNTHAR, J.

KP

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