



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Tr.C.M.P.Nos.619 & 721 of 2022
and
C.M.P.Nos.10558 & 12257 of 2022

G.Indhu .. Petitioner in
Tr.C.M.P.No.619 of 2022

L.Gopalakrishnan .. Petitioner in
Tr.C.M.P.No.721 of 2022

VS

L.Gopalakrishnan .. Respondent in
Tr.C.M.P.No.619 of 2022

G.Indhu .. Respondent in
Tr.C.M.P.No.721 of 2022

Prayer in Tr.C.M.P.No.619 of 2022: Transfer CMP is filed under Section 24 of the Civil Procedure Code, to withdraw H.M.O.P.No.144 of 2021 on the file of the Sub-Court Mettur at Salam filed by the respondent and transfer the same to Additional Family Court, Coimbatore;

Prayer in Tr.C.M.P.No.721 of 2022: Transfer CMP is filed under Section 24 of the Civil Procedure Code, to withdraw the H.M.O.P.No.770 of 2022 on the file of the Family Court, Coimbatore District and to transfer the same to the Sub-Court, Mettur, Salem District.



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For Petitioner in
Tr.C.M.P.No.619 of 2022 : No Appearance

For Petitioner in
Tr.C.M.P.No.721 of 2022 : Mr.N.Vijaya Basker
for M/s Law Vision

For Respondent in
Tr.C.M.P.No.619 of 2022 : Mr.N.Vijaya Basker
for M/s Law Vision

For Respondent in
Tr.C.M.P.No.721 of 2022 : Mr.K.Sudhakar

COMMON ORDER

The marriage between one G.Indhu and L.Gopalakrishnan was solemnized on 14.01.2015 as per the Hindu Rites and Customs. Two children were born from and out of the wedlock and now they are living with the said Gopalakrishnan and looked after by their grandparents.

2. On account of certain allegations, they left the matrimonial home and are residing separately. The husband filed H.M.O.P.No.144 of 2021 for divorce on the file of the Sub Court, Mettur. The wife filed H.M.O.P.No.770 of 2022 on the file of the Family Court, Coimbatore for restitution of conjugal rights. That apart, the wife filed another G.W.O.P for the custody



of the children in Mettur, since the children are residing along with their grandparents.

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3. Learned counsel appearing for the wife states that she is now residing with her parents and not provided with visitation rights to see her children. Therefore, she filed the G.W.O.P. before the jurisdictional Court at Mettur and she is employed at Coimbatore. Under these circumstances, the petitioner is not able to travel and accustom the divorce case filed by the husband before the Sub Court, Mettur and G.W.O.P filed by her for seeking custody of the children.

4. Learned counsel appearing for the husband objected the said contention by stating that the said Indhu / wife is having an illicit relationship with another person at Coimbatore and therefore, there is no scope for reunion and the children are also being maintained by him with the help of his parents. Thus, the transfer petition viz., Tr.C.M.P.No.619 of 2022 deserves to be rejected.

5. The husband filed another Tr.C.M.P.No.721 of 2022 to transfer the



H.M.O.P.No.770 of 2022 from Family Court, Coimbatore to Sub Court, Mettur, Salem District.

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6. The petitioner wife is residing at Coimbatore along with her parents. She has also filed a G.W.O.P. before the Sub Court, Mettur for custody of children. The respondent filed a divorce petition in Sub Court, Mettur. In the interest of the parties, all the cases are to be heard together.

7. The principles regarding transfer petitions, more specifically in the matters of matrimonial cases, are well settled through the three decisions of the High Court of Madras, in the following cases:-

(i) The Hon'ble Division Bench of the High Court of Madras in ***W.A.No.1181 of 2009, dated 09.07.2010***, wherein in paragraphs-21 and 22, it has been observed as under:-

“21. The domicile or citizenship of the opposite party is immaterial in a case like this. In case the marriage was solemnized under Hindu Law marital relationship is governed by the provisions of the Hindu Marriage Act. Therefore, Section 19 has to be given a purposeful interpretation. It is the residence of the wife,



which determines the question of jurisdiction, in case the proceeding was initiated at the instance of the wife.

22. While considering a provision like Section 19 (iii-a) of the Hindu Marriage Act, the objects and reasons which prompted the parliament to incorporate such a provision has also to be taken note of. Sub Clause (iii-a) was inserted in Section 19 with a specific purpose. Experience is the best teacher. The Government found the difficulties faced by women in the matter of initiation of matrimonial proceedings. The report submitted by the Law Commission as well as National Commission for Women, underlying the need for such amendment so as to enable the women to approach the nearest jurisdictional court to redress their matrimonial grievances, were also taken note of by the Government. Therefore such a beneficial provision meant for the women of our Country should be given a meaningful interpretation by Courts.”

(ii) In yet another case in ***Tr.CMP.Nos.138 and 139 of 2006, dated***



30.08.2006, the High Court of Madras has considered the following judgments of Hon'ble Supreme Court of India:-

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*“(1) In the case of **Mona Aresh Goel vs. Aresh Satya Goel [(2000) 9 SCC 255]**, when the wife pleaded that she was unable to bear the traveling expenses and even to travel alone and stay at Bombay, the Supreme Court ordered transfer of proceedings.*

*(2) In the case of **Geeta Heera vs. Harish Chander Heera [(2000) 10 SCC 304]**, the Hon'ble Supreme Court has held that where the petitioner's wife has pleaded lack of money, the same has to be considered.*

*(3) In the case of **Lalita A.Ranga vs. Ajay Champalal Ranga [(2000) 9 SCC 355]**, the wife has filed a petition to transfer the proceedings initiated by the husband for divorce, at Bombay. The place of residence of the wife was at Jaipur, Rajasthan. In that case, the petitioner is having a small child and that she pleaded difficulty in going all the way from Jaipur to Bombay to contest the proceedings from time to time. Considering the distance and the difficulties faced by the wife, the Supreme Court has allowed the transfer petition.*

*(4) In a decision in **Archana Singh vs.***



Surendra Bahadur Singh [(2005) 12 SCC 395], the wife has sought for transfer of matrimonial proceedings and a divorce petition has been filed by the respondent's husband at Baikunthpur to be transferred to Allahabad, where the petitioner's wife was residing, on the ground that it would be difficult for her to undertake such long distance journey, particularly in circumstances, in which she finds that the proceedings under 5 Section 125 Cr.P.C. was already pending before the Family Court, Allahabad. Considering the difficulties faced by the wife and also the long distance journey, the Honourable Supreme Court was pleased to order transfer of the proceedings to Allahabad.”

(iii) In a decision made in **TR.CMP(MD)No.108 of 2010, dated 03.03.2011**, the Madurai Bench of Madras High Court, wherein in paragraph-18, it has been observed as below:-

“18. It is true that section 19 of the Hindu Marriage Act, has been amended by insertion of proviso of (iii)(a) to section 19. Of Course, this amended section 19(iii)(a) gives special preference to the wife to file a petition or defending the case of the husband before the Court within whose



jurisdiction she resides. The intention of the Legislature is to safe-guard the interest and rights of the women, who are being subjected to harassment and cruelty. But this special preference conferred under section 19(iii)(a) of the Hindu Marriage Act shall not be used to wreck vengeance on the husband. There must be a justifiable cause to select the jurisdiction of the Court where she resides.”

8. In view of the facts and circumstances, the H.M.O.P.No.144 of 2021 pending on the file of the Sub Court, Mettur, Salem District stands transferred to the Additional Family Court, Coimbatore, to be tried along with the H.M.O.P.No.770 of 2022.

9. Accordingly, Tr.C.M.P.No.619 of 2022 stands allowed and Tr.C.M.P.No.721 of 2022 stands dismissed. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

08.12.2022

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Index : Yes / No
Speaking order / Non-speaking order

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To

1. The Sub Court, Mettur
Salem District.
2. The Additional Family Court, Coimbatore.



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Tr.C.M.P.Nos.619 & 721 of 2



S.M.SUBRAMANIAM, J.

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and
C.M.P.Nos.10558 & 12257 of 2022

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