



WEB COPY

Tr.C.M.P.No.1135 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Tr.C.M.P.No.1135 of 2022

and

C.M.P.No.21025 of 2022

V.Sri Suvedha

... Petitioner

Vs.

N.Manikandan

... Respondent

Prayer: Transfer CMP is filed under Section 24 of the Civil Procedure Code, to withdraw the GWOP No.1 of 2022 pending on the file of learned District Cum Session Court, Nilgiris, Udthagamandalam and transfer the same to the learned District Court, Salem to try along with GWOP No.11 of 2022.

For Petitioner : Ms. M.Lakshmi Priya Muthu Ramalingam

For Respondent : Mr. P.Harikrishnan
For M/s.MCGAN Law Firm

ORDER

The petition for transfer is filed to withdraw the GWOP No.1 of 2022 pending on the file of learned District Cum Session Court, Nilgiris, Udthagamandalam and transfer the same to the learned District Court, Salem to try along with GWOP No.11 of 2022.



2. The marriage between the petitioner and the respondent was solemnized on 15.11.2013 as per Hindu Rites and Customs. One male child was born from and out of the wedlock between the petitioner and the respondent and now living with the petitioner / mother. Due to some misunderstanding, the petitioner and the respondent are living separately. The petitioner filed GWOP No.11 of 2022 on the file of the District Court, Salem. The petitioner further filed HMOP No.111 of 2021 seeking dissolution of marriage, which is also pending on the file of the Sub Court at Omalur, Salem. The respondent/ husband filed GWOP No.1 of 2022 pending on the file of the District cum Session Court, Nilgiris.

3. The learned counsel for the petitioner states that the petitioner is now permanently residing with her parents at Omalur, Salem. She is working in Government Department and recently transferred to Chennai. Further, she has to take care of the child with the assistance of her parents and therefore, she has instituted the case at Salem. When the cases were filed, the petitioner was in Salem and recently she was transferred to Chennai, since she is working in the Government Department. However, the parents of the petitioner is residing at Salem. Therefore, the learned counsel



for the petitioner reiterated that the cases are to be tried before the Court at Salem.

WEB COPY

4. The learned counsel for the respondent vehemently opposed the contentions raised on behalf of the petitioner by stating that the petitioner is now being transferred at Chennai and therefore, the Court at Salem lost its relevance and thus, this transfer petitioner is to be rejected. It is further contended that the family of the petitioner are threatening the respondent/husband and he may not be in a position to contest the case at Salem freely and fairly.

5. This Court is of the considered opinion that the three cases are now pending out of which GWOP No.11 of 2022 pending on the file of District Court at Salem and HMOP No.111 of 2021 are pending before the Sub Court at Salem. At the time of filing the above two cases, the petitioner wife was residing at Salem and therefore, she got transferred to Chennai. Since she is working in the Government Department, there is a possibility that again she may seek transfer to Salem or to any nearby place, which cannot be gone into in the present transfer petition.



WEB COPY

6. Even otherwise, it is admitted that the respondent/ husband is residing at Nilgiris District. The distance between the Nilgiris and Chennai is far away and contrarily, the distance between the Salem and Nilgiris is lesser than that of the distance to Chennai. Regarding any threat or otherwise, if any and untold incidents happened, it is for the respondent to take appropriate action in the manner known to law. The parties are expected to conduct the cases in a peaceful manner and by respecting each other and they are not expected to indulge in any illegal or other activity.

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.”



WEB COPY

(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:-

*“(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 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. Considering the facts and circumstances, GWOP No.1 of 2022 pending on the file of the District cum Session Court, Nilgiris, Udhagamandalam stands transferred to the District Court, Salem. The District cum Session Court, Nilgiris, Udhagamandalam is directed to transmit all the case papers to the District Court, Salem, to be tried along with GWOP No. 11 of 2022 within a period of four (4) weeks from the date of receipt of a copy of this order.



9. With the abovesaid directions, the Transfer Civil Miscellaneous
Petition stands allowed. However, there shall be no order as to costs.
Consequently, the connected miscellaneous petition is closed.

08.12.2022

Skr/Jeni
Index : Yes
Speaking order

To

1.The Judge,
District cum Session Court,
Nilgiris,
Udhagamandalam.

2.The Judge,
District Court,
Salem.



WEB COPY

Tr.C.M.P.No.1135 of 2



S.M.SUBRAMANIAM, J.

Skr

Tr.C.M.P.No.1135 of 2022

08.12.2022