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Tr.CMP Nos.1088,1168,1269,1270 and 1271 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08-12-2022

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

Tr.C.M.P.Nos.1088, 1168, 1269, 1270 and 1271 of 2022
and
C.M.P.Nos.18671, 19925, 21468, 21469 and 21470 of 2022

M.Santhiya Priyadarshini	.. Petitioner in Tr.CMPs 1088 and 1168/2022
K.N.Manivannan Sudhevan	.. Petitioner in Tr.CMPs 1269, 1270 and 1271/2022
VS.	
K.N.Manivanna Sudhevan	.. Respondent in Tr.CMPs 1088 and 1168/2022
M.Santhiya Priyadarshini	.. R-1 in Tr.CMPs 1269 and Respondent in 1271/2022
Minor M.Kirithine	.. R-2 in Tr.CMP 1269/2022 and R-1 in 1270/2022
Minor M.Sathvika	.. R-3 in Tr.CMP 1269/2022 and R-2 in 1270/2022



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[Minors M.Kirithine and Minor M.Sathvika are represented by their next friend and mother M.Santhiya Priyadarshini]

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Tr.CMP No.1088 of 2022 is filed under Section 24 of the Civil Procedure Code, to withdraw the case in HMOP No.1442 of 2022 from the file of the Additional Family Court, Coimbatore and transfer the same to the file of the Sub Court, Dharapuram.

Tr.CMP No.1168 of 2022 is filed under Section 24 of the Civil Procedure Code, to withdraw the case in GWOP No.1753 of 2022 from the file of the Family Court, Coimbatore and transfer the same to the file of the Sub Court, Dharapuram.

Tr.CMP No.1269 of 2022 is filed under Section 24 of the Civil Procedure Code, to withdraw the case in OS No.190 of 2021 from the file of the Sub Court, Dharapuram and transfer the same to the file of the Additional Principal Family Court, Coimbatore to try along with HMOP No.1442 of 2022 and GWOP No.1753 of 2022 respectively or to any other Competent Court at Coimbatore for joint trial.

Tr.CMP No.1270 of 2022 is filed under Section 24 of the Civil Procedure Code, to withdraw the case in OS No.682 of 2022 from the file of the III Additional District Court, Dharapuram and transfer the same to the



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file of the Additional Principal Family Court, Coimbatore to try along with HMOP No.1442 of 2022 and GWOP No.1753 of 2022 respectively or to any other Competent Court at Coimbatore for joint trial.

Tr.CMP No.1271 of 2022 is filed under Section 24 of the Civil Procedure Code, to withdraw the case in HMOP No.60 of 2021 from the file of the Sub Court, Dharapuram and transfer the same to the file of the Additional Principal Family Court, Coimbatore to try along with HMOP No.1442 of 2022 and GWOP No.1753 of 2022 respectively or to any other Competent Court at Coimbatore for joint trial.

For Petitioner in Tr.CMPs.

1088 and 1168/2022 and

For Respondents in Tr.

CMPs 1269 & 1270 and

For Respondent in

1271 of 2022

: Mr.K.S.Jeya Ganeshan for
Mr.P.Navaneetha Krishnan.

For Respondent in Tr.CMPs

1088 and 1168/2022

and For petitioner in Tr.

CMPs 1269, 1270 and

1271 of 2022

: Mr.N.Manoharan



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COMMON ORDER

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The Transfer Civil Miscellaneous Petition No.1088 of 2022 is filed to withdraw the case in HMOP No.1442 of 2022 from the file of the Additional Family Court, Coimbatore and transfer the same to the file of the Sub Court, Dharapuram.

2. The Transfer Civil Miscellaneous Petition No.1168 of 2022 is filed to withdraw the case in GWOP No.1753 of 2022 from the file of the Family Court, Coimbatore and transfer the same to the file of the Sub Court, Dharapuram.

3. The Transfer Civil Miscellaneous Petition No.1269 of 2022 is filed to withdraw the case in OS No.190 of 2021 from the file of the Sub Court, Dharapuram and transfer the same to the file of the Additional Principal Family Court, Coimbatore to try along with HMOP No.1442 of 2022 and GWOP No.1753 of 2022 respectively or to any other Competent



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Court at Coimbatore for joint trial.

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4. The Transfer Civil Miscellaneous Petition No.1270 of 2022 is filed to withdraw the case in OS No.682 of 2022 from the file of the Additional District Court, Dharapuram and transfer the same to the file of the Additional Principal Family Court, Coimbatore to try along with HMOP No.1442 of 2022 and GWOP No.1753 of 2022 respectively or to any other Competent Court at Coimbatore for joint trial.

5. The Transfer Civil Miscellaneous Petition No.1271 of 2022 is filed to withdraw the case in HMOP No.60 of 2021 from the file of the Sub Court, Dharapuram and transfer the same to the file of the Additional Principal Family Court, Coimbatore to try along with HMOP No.1442 of 2022 and GWOP No.1753 of 2022 respectively or to any other Competent Court at Coimbatore for joint trial.



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6. The marriage between the petitioner and the respondent was solemnised on 17.03.2008 as per Hindu Rites and Customs. Two children were born from and out of the wedlock between the petitioner-wife and the respondent-husband. Due to misunderstanding, the petitioner and the respondent are living separately. Now the petitioner and both the children are residing in the residence of petitioner's parents.

7. The learned counsel for the petitioner states that the respondent filed HMOP No.1442 of 2022 for restitution of conjugal rights on the file of the Principal Family Court at Coimbatore. The learned counsel for the petitioner further states that the petitioner is a permanent resident of Dharapuram and temporarily residing at Coimbatore. Thus the case is to be transferred to the Sub Court, Dharapuram, wherein the other cases are also pending between the petitioner and the respondent.

8. The learned counsel for the respondent raised an objection by stating that the petitioner is residing at Coimbatore along with her two



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children, who all are studying at Coimbatore. The details regarding their residence and the school details are elaborately stated by the petitioner in HMOP No.60 of 2021 filed by her for dissolution of marriage.

9. In the suit filed by the petitioner in O.S.No.190 of 2021 pending on the file of the Sub Court, Dharapuram and O.S.No.682 of 2022 pending on the file of the III Additional District Court, Dharapuram for partition. In the said suits, the petitioner has elaborately stated that she is residing at Coimbatore along with her son and daughter, wherein, her son is studying at 'Akshyantara Special Learning School' functioning inside Vivekalaya Matriculation School and her daughter is also studying in the same school.

10. The petitioner is living along with her parents at Coimbatore in an apartment. The details regarding the properties are also stated in the suit. While-so, there is a force in the contention raised on behalf of the wife.



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11. The parties have filed various litigations both before the

Courts at Coimbatore and before the Courts at Dharapuram. The details of

the cases filed by the petitioner and the respondent are as under:-

S.No.	Case Number	Name of the Court
1.	HMOP No.60 of 2021	Sub Court at Dharapuram
2.	OS No.190 of 2021	Sub Court at Dharapuram
3.	OS No.682 of 2022	III Additional District Court at Dharapuram
4.	DVOP No.6 of 2021	Judicial Magistrate Court at Dharapuram.

12. 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



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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



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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:-

"(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



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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.



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(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



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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 Legislator 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."

13. Considering the fact that the petitioner-wife is residing at



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Coimbatore and the respondent-husband is residing at Erode, the cases filed by both the parties are to be tried before the Courts at Coimbatore not only for the convenience of the parties, but also for the convenience of the children, who all are studying at Coimbatore. Thus, this Court is inclined to consider that the cases filed before the Courts at Dharapuram are to be transferred to the Courts at Coimbatore except the DVOP No.6 of 2021, the details of which are given below:-

S.No.	Case Number	Name of the Court
1.	HMOP No.60 of 2021	Sub Court at Dharapuram
2.	OS No.190 of 2021	Sub Court at Dharapuram
3.	OS No.682 of 2022	III Additional District Court at Dharapuram

14. Thus the cases pending before the Courts at Dharapuram (cited supra) are directed to be transferred to the Additional Family Court at Coimbatore to be tried along with HMOP No.1442 of 2022. The Additional Family Court at Coimbatore is requested to dispose of all the cases as



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expeditiously as possible. Since the parties are willing for mediation, the Court concerned may provide an opportunity for the same.

15. With the abovesaid directions, all the Transfer Civil Miscellaneous Petitions are disposed of. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

08-12-2022

Speaking Order/Non-Speaking Order.

Internet : Yes/No.

Index: Yes/No.

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To

1.The Additional Judge,
Additional Family Court,
Coimbatore.

2.The Sub Judge,
Sub Court,
Dharapuram.

3.The III Additional District Judge,

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Dharapuram.

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S.M.SUBRAMANIAM, J.

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4.The Judge,
Family Court,
Coimbatore.

5. The Additional Principal Judge,
Additional Principal Family Court,
Coimbatore.

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