



WEB COPY

Tr.C.M.P.Nos.1126 & 1127 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.Nos.1126 & 1127 of 2022

and

C.M.P.Nos.19199 & 19202 of 2022

N.Karthika

... Petitioner
(in both 2 Tr.CMPs)

Vs.

V.C.M.Sivaprakasam

... Respondent
(in both 2 Tr.CMPs)

Prayer in Tr.C.M.P.No.1126 of 2022: Transfer CMP is filed under Section 24 of the Civil Procedure Code, to withdraw the case pending on the file of the Family Judge at, Salem in HMOP No.141/2022 and transfer the same to the file of the Family Judge at Namakkal or any other appropriate Court.

Prayer in Tr.C.M.P.No.1127 of 2022: Transfer CMP is filed under Section 24 of the Civil Procedure Code, to withdraw the case pending on the file of the Family Judge at, Salem in GOP No.362/2022 and transfer the same to the file of the Family Judge at Namakkal or any other appropriate Court.



For Petitioner : Mr.N.Umapathi
(in both 2 Tr.CMPs)

For Respondent : Mr.S.Doraisamy
For Mr.V.Elongovan
(in both 2 Tr.CMPs)

ORDER

The petitions for transfer are filed to withdraw the petitions HMOP No.141 of 2022 and GOP No.362 of 2022 on the file of the Family Court, Salem and transfer the same to the file of the Family Court, Namakkal.

2. The marriage between the petitioner and the respondent was solemnised on 12.02.2016 as per the Hindu Rites and Customs. Two children were born from and out of the wedlock between the petitioner and the respondent and they are aged about 5 years and 1 years respectively. Both the children are now living with the petitioner and the respondent filed HMOP No.141 of 2022 and GOP No.362 of 2022 on the file of the Family Court at Salem.

3. The learned counsel for the petitioner mainly contented that the petitioner is unemployed and residing with her parents. She is depending on



her parents and the respondent is not supporting the petitioner as well as the two children. She has to maintain the two minor children with the help of her parents and under these circumstances she is not in a position to attend the Family Court at Salem, wherein the respondent filed HMOP No.141 of 2022 and GOP No.362 of 2022.

4. The learned counsel for the respondent objected the said contention by stating that the petitioner is not residing at Namakkal and residing at Salem. The petitioner herself has stated in the affidavit filed in support of the transfer petition that the first child is studying at Salem. More so, in other complaint also she has stated that she is residing at Salem and therefore, the transfer petition is to be dismissed.

5. Perusal of the documents filed by the petitioner would reveals that the respondent filed HMOP No.141 of 2022 on the Family Court at Salem for Dissolution of Marriage under Section 13(1)(ia)(iii) of the Hindu Marriage Act, wherein, the respondent himself has stated the address of the respondent as N.Karthika, wife of V.C.M.Sivaprakasam daughter of Neelamegam, residing at the care of her father at Kamalamillam,59



Periyapatti Road, S.P.Pudur, Namakkal – 637 001. The respondent filed another petition in GOP No.362 of 2022, therein also the respondent / husband has stated that the petitioner is voluntarily living with her parent house from March 2020. The parent's house of the petitioner is at Namakkal and there is no dispute on that.

6. Further, it is not in dispute that the petitioner and the respondent are living at Salem, wherein, the two children were born and therefore, she was residing at Salem previously and merely stating in the petition that she was residing at Salem would not deprive her from getting the case to be transferred to Namakkal, wherein, now the petitioner is residing.

7. In all such circumstances, the Courts have consistently held that the place of the wife is the choice for conducting trial in matrimonial cases. The Apex Court also held that the place of wife is to be preferred for conducting trial in matrimonial cases. Therefore, this Court is of an opinion that both the cases filed by the respondent before the Family Court at Salem is to be transferred.



8. 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:-

*“(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 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



WEB COPY

Tr.C.M.P.Nos.1126 & 1127 of 2



jurisdiction of the Court where she resides.”



9. Considering the facts and circumstances, the HMOP No.141 of 2022 and GOP No.362 of 2022 pending on the file of the Family Court, Salem stand transferred to the Family Court at Namakkal forthwith. The Family Court, Salem is directed to transmit all the case papers to the Family Court at Namakkal for speedy trial, within a period of four (4) weeks from the date of receipt of a copy of this order.

10. With the abovesaid directions, the Transfer Civil Miscellaneous Petitions stand allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

08.12.2022

Jeni
Index : Yes
Speaking order

To

1.The Judge,
Family Court,
Salem.

2.The Judge,
Family Court,
Namakkal.



WEB COPY

Tr.C.M.P.Nos.1126 & 1127 of 2



S.M.SUBRAMANIAM, J.

Jeni

Tr.C.M.P.Nos.1126 & 1127 of 2022

08.12.2022