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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

Tr. C.M.P. Nos.1017 of 2019 and 37 of 2020
and
C.M.P. Nos.27256 of 2019 and 1212 of 2020

Tr. C.M.P. No.1017 of 2019:

A.Iswaria ... Petitioner

Vs.

K.Ashok Kumar ... Respondent

PRAYER: Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C to withdraw and transfer F.C.O.P. No.4571 of 2019 from the file of the IV Additional Judge, Family Court, Chennai to the Court of Principal Subordinate Judge, Mayiladuthurai for joint trial with H.M.O.P. No.299 of 2019.

For Petitioner : Mr.A.Muthukumar

For Respondent : Mr.S.Jeyakumar

Tr. C.M.P. No.37 of 2020:

K.Ashok Kumar ... Petitioner

Vs.

A.Iswaria ... Respondent

PRAYER: Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C to withdraw the case in H.M.O.P. No.299 of 2019 on the file of the Principal Subordinate Court at Mayiladuthurai and transfer the same to IV Additional Family Court, Chennai for joint trial with F.C.O.P. No.4571 of 2019.

For Petitioner : Mr.S.Jeyakumar

For Respondent : Mr.A.Muthukumar



COMMON ORDER

Transfer Civil Miscellaneous Petition No.1017 of 2019 is filed by the wife seeking transfer of F.C.O.P. No.4571 of 2019 pending on the file of the IV Additional Judge, Family Court, Chennai, filed by the husband for divorce to the file of the Principal Subordinate Court, Mayiladudurai, where the petition for restitution of conjugal rights filed by the wife is pending.

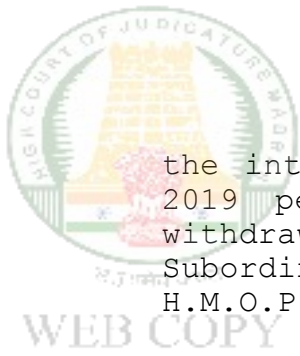
2. Transfer Civil Miscellaneous Petition No.37 of 2020 filed by the husband seeking transfer of H.M.O.P. No.299 of 2019 filed by the wife on the file of the Principal Subordinate Court, Mayiladudurai seeking restitution of conjugal rights to the file of the IV Additional Judge, Family Court, Chennai, where the petition for divorce filed by the husband in F.C.O.P. No.4571 of 2019 is pending.

3. The wife would seek transfer of the proceedings on the ground that she is residing with her aged parents at Mayiladudurai at their expenses, since the husband has not been giving any maintenance to her. Further, her father is aged over 71 years and would not be in a position to travel with her each time, as she has to attend the Court. She would further submit that since the F.C.O.P is pending before the Family Court, Chennai, she has to attend every hearing.

4. On the contrary, if the matter is transferred to the said Subordinate Court, Mayiladudurai, the presence of both parties are not required and it would suffice that the husband shall appear at the time of adducing the evidence. She would further submit that since she is residing at Mayiladudurai, the Principal Subordinate Court, Mayiladudurai has jurisdiction to entertain the said petition.

5. On the other hand, the counsel appearing for the husband would submit that the husband has to take care of his aged parents. A perusal of the affidavit would indicate that the ailments are only age related, that apart, the petitioner, who is employed would also find it comfortable, if he does not have to attend every hearing of the case. Admittedly, the husband has not been providing any maintenance to the wife. In these circumstances, he cannot insist upon her travelling from Nagapattinam to Chennai for every hearing, as the matter is now before the Family Court, Chennai. The Court has to definitely look into this inconvenience of the respondent as she cannot travel by herself to Chennai and would have to definitely have the assistance of somebody, which would involve an additional expenditure.

6. In these circumstances, this Court is of the view that



the interest of Justice would be served if F.C.O.P. No.4571 of 2019 pending on the file of the Family Court, Chennai is withdrawn and transferred to the file of the Principal Subordinate Court, Mayiladudurai and to be tried along with H.M.O.P. No.299 of 2019.

7. Accordingly, the Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C to withdraw and transfer F.C.O.P. No.4571 of 2019 from the file of the IV Additional Judge, Family Court, Chennai to the Court of Principal Subordinate Judge, Mayiladuthurai for joint trial with H.M.O.P. No.299 of 2019 filed by the wife is allowed and the Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C to withdraw the case in H.M.O.P. No.299 of 2019 on the file of the Principal Subordinate Court at Mayiladuthurai and transfer the same to IV Additional Family Court, Chennai for joint trial with F.C.O.P. No.4571 of 2019 filed by the husband is dismissed. The learned Judge shall endeavour to dispose of both H.M.O.P.No.299 of 2019 and F.C.O.P.No.4571 of 2019 on or before 31.08.2022. No costs. Consequently, the connected Civil Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

ab/ssn

To

1. The IV Additional Judge, Family Court,
Chennai.
2. The Principal Subordinate Judge,
Mayiladuthurai
3. The Section Officer,
VR Section, Madras High Court,
Chennai.

+2ccs to Mr.A.Muthukumar, Advocate, S.R.Nos.12870, 12871
+1cc to Mr.Jayakumar, Advocate, S.R.No.12981

Tr. C.M.P. Nos.1017 of 2019 and 37 of 2020
and C.M.P. Nos.27256 of 2019 and 1212 of 2020

SPD(CO)
SU(21/03/2022)