



TR.C.M.P(MD).No.433 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

TR.C.M.P(MD).No.433 of 2022

C.Selvapriya

... Petitioner

v.

T.Parthasarathy

... Respondent

Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C to withdraw the case in G.W.O.P.No.76 of 2021 on the file of the IV Additional District Court, Tirunelveli and transfer the same to the Family Court, Madurai to be jointly tried with the petition for restitution of conjugal rights in H.M.O.P.No.441 of 2021 filed by the petitioner and divorce petition in H.M.O.P.No.1317 of 2021 filed by the respondent.

For Petitioner : Mr.J.Barathan

For Respondent : Mr.V.Meenakshi Sundaram



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ORDER

This Transfer Civil Miscellaneous Petition has been filed seeking transfer of the case in G.W.O.P.No.76 of 2021 from the file of the IV Additional District Court, Tirunelveli to the file of the Family Court, Madurai and to try the same along with the petition for restitution of conjugal rights in H.M.O.P.No.441 of 2021 filed by the petitioner and divorce petition in H.M.O.P.No.1317 of 2021 filed by the respondent.

2. The petitioner is the wife and the respondent is the husband. The marriage between the petitioner and the respondent was solemnized on 02.07.2014 and out of the wedlock, they are having a baby boy aged about seven years. Due to some misunderstanding, they are living separately. The petitioner has filed a petition in H.M.O.P.No.441 of 2021 before the Family Court, Madurai, seeking restitution of conjugal rights and the respondent has filed a petition in H.M.O.P.No.1317 of 2021 before the Family Court, Madurai, seeking divorce. In the meantime, the respondent and his family took custody of the minor boy and therefore, the petitioner has filed



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G.W.O.P.No.76 of 2021 before the Additional District Court, Tirunelveli, seeking custody of the minor child.

3. Learned Counsel for the petitioner submitted that since two applications are already filed by both of the parties for restitution of conjugal rights and for divorce and are pending before the Family Court, Madurai, the petition in G.W.O.P.No.76 of 2021 may also be transferred to the file of the Family Court, Madurai for trying along with the same. He further submitted that the petition was originally filed before the Additional District Court, Tirunelveli, for the reason that the minor boy was with the custody of the respondent's parents at Agasthiarpatti, Tirunelveli. But, now the minor boy is at Chennai along with the respondent. Therefore, he prayed for transferring the case to Madurai, so that all the three petitions may be tried together.

4. Learned Counsel for the respondent has no serious objection in transferring the application, however, prayed for a direction to the trial Court for early disposal of the petitions.



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5. The Hon'ble Apex Court in the case of *Amitha Shah vs- Virendar Lal Shah*, reported in *(2003)10 SCC 609* has held that the convenience of the wife and more so of the child must be taken into account while deciding the petition for transfer. In the case of *Rajani Kishor Paradeshi Vs Kishor Babulal Paradeshi reported in (2005) 12 SCC 237*, the Hon'ble Apex Court has held that in such type of transfer petitions, the convenience of the wife is to be preferred over the convenience of the husband.

6. This Court being satisfied with the reasons stated in the affidavit filed in support of this petition and also taking into account that the ratio laid down by the Hon'ble Apex Court in the judgments cited supra, is inclined to allow the present petition.

7. In the light of the above, this transfer civil miscellaneous petition stands allowed. The proceedings in G.W.O.P.No.76 of 2021 pending on the file of the IV Additional District Court, Tirunelveli, is withdrawn and ordered to be transferred to the file of the Family Court, Madurai. The learned Judge, IV Additional District Court, Tirunelveli, is directed to transmit the entire



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case records to the Family Court, Madurai, forthwith. The learned Judge, Family Court, Madurai, shall try this petition along with the petition in H.M.O.P.No.441 of 2021 filed by the petitioner for restitution of conjugal rights and the petition in H.M.O.P.No.1317 of 2021 filed by the respondent for divorce and shall endeavour to dispose of the same as expeditiously as possible. No costs.

Index : Yes / No
Internet: Yes / No
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19.09.2022

To

1. The Family Court,
Madurai.
2. The IV Additional District Court,
Tirunelveli.



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B.PUGALENDHI, J.

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