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C.R.P.No.184 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2023

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.No.184 of 2023

and

C.M.P.No.1424 of 2023

Noorul Ain

... Petitioner

Vs.

Kamal Nazeer

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the Judgment and Decree passed in O.S.No.251 of 2019 dated 02.12.2021 on the file of District Munsif cum Judicial Magistrate, Thiruvudaimarudhur, (Transferred and renumbered from O.S.No.363 of 2018 on the file of Principal District Munsif Court, Kumbakonam).

For Petitioner

: Mr.S.C.Vishwanth

ORDER

The Civil Revision Petition is filed to set aside the Judgment and Decree passed in O.S.No.251 of 2019 dated 02.12.2021.



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2. The marriage between the petitioner and the respondent was solemnized on 26.10.2015 as per the Muslim Rites and Customs. One child was born from and out of the wedlock between the petitioner and the respondent and now with the custody of the petitioner / mother.

3. The respondent instituted a Suit in O.S.No.363 of 2018 for Dissolution of Marriage on the file of the Principal District Munsif Court at Kumbakonam. The revision petitioner during the relevant point of time was residing at Chennai along with her parents. The revision petitioner had filed a Transfer Petition in Tr.C.M.P.No.470 of 2019 before the High Court to transfer the case from Kumbakonam Court to Chennai Court. High Court granted an interim stay of all further proceedings in O.S.No.363 of 2018 and without taking note of the interim stay granted by the High Court, the Transfer Petition in Tr.C.M.P.No.470 of 2019 filed by the revision petitioner was allowed by the High Court on 26.08.2019. The Principal District Munsif Court, Kumbakonam instead of transferring the case papers relating to the Suit in O.S.No.363 of 2018 to the Family Court at Chennai, erroneously transmitted the case papers to the Court at Thiruvudaimarudhur. Since the case papers were wrongly transferred to District Munsif Cum



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Judicial Magistrate Court at Thiruvudaimarudhur, the revision petitioner was not aware of the proceedings and the Court at Thiruvudaimarudhur passed an *ex-parte* decree of Divorce against the revision petitioner and she had no knowledge about the *ex-parte* decree passed by the District Munsif Cum Judicial Magistrate Court at Thiruvudaimarudhur.

4. The Suit filed in O.S.No.363 of 2018 was re-numbered as O.S.No.251 of 2019 by the District Munsif Cum Judicial Magistrate Court at Thiruvudaimarudhur and challenging the *ex-parte* decree, the revision petitioner has chosen to file the present Civil Revision Petition.

5. When the matter was taken up for admission by this Court, an interim order was passed by this Court, directing the Registrar General, High Court of Madras to conduct an enquiry in respect of the lapses committed by the Principal District Munsif Court at Kumbakonam. May that as it be. This Court is of the considered opinion that the revision petitioner filed the Transfer Petition in Tr.C.M.P.No.470 of 2019, which was allowed by this Court on 26.08.2019, transferring the Suit in O.S.No.363 of 2018 from Principal District Munsif Court at Kumbakonam to the Family Court at Chennai.



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6. When the respondent was aware of the transfer order passed by this Court, intentionally proceeded with the case report before the District Munsif Cum Judicial Magistrate Court at Thiruvudaimarudhur and thus, the *ex-parte* decree obtained by the respondent is ill-motivated and cannot be sustained. The respondent ought to have informed the Court that the case was transferred to the Family Court, Chennai and it was mistakenly transferred to the Court at Thiruvudaimarudhur. Neither the Counsel nor the respondent informed the Court, which resulted in miscarriage of justice, as far as the revision petitioner is concerned.

7. Accordingly, the Judgment and Decree dated 02.12.2021 passed in O.S.No.251 of 2019 by the District Munsif Cum Judicial Magistrate Court at Thiruvudaimarudhur (transferred and re-numbered from O.S.No.363 of 2018 on the file of the Principal District Court at Kumbakonam) is set aside and the Suit in O.S.No.251 of 2019, as per the orders of this Court dated 26.08.2019 in Tr.C.M.P.No.470 of 2019 is directed to be transferred to the Family Court at Chennai for conducting trial.



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8. The District Munsif Cum Judicial Magistrate Court at Thiruvudaimarudhur is directed to transmit the case papers relating to the Suit in O.S.No.251 of 2019 to the Family Court at Chennai within a period of two weeks from the date of receipt of copy of this order and the Family Court at Chennai shall re-number the case and issue notice to the parties and adjudicate the matter on merits and in accordance with law.

9. With these directions, the Civil Revision Petition stands allowed.
No costs. Consequently, connected Miscellaneous Petition is closed.

25.01.2023

skr/jeni

Index : Yes
Speaking order
Neutral Citation : Yes

To

1.The Judge,
District Munsif cum Judicial Magistrate,
Thiruvudaimarudhur.

2.The Judge,
Family Court,
Chennai.



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S.M.SUBRAMANIAM, J.

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