



Tr CMP (MD) No. 180 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Tr.C.M.P.(MD) No.180 of 2023

and

CMP(MD)No.3912 of 2023

Mariyam Alias Tahira

... Petitioner/Respondent

-vs-

A.S. Adam Shafiullah

... Respondent/Petitioner

PRAYER: Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw O.S.No.9 of 2023 on the file of Family Court, Trichy and to transfer the same to learned Family Court, Madurai, for disposal.

For Petitioners : Mr.C.M.Mari Chelliah Prabhu

For Respondent : Mr.C.Susikumar
for M/s.Subash law office

ORDER

The present Transfer Civil Miscellaneous Petition is filed to withdraw the O.S. No. 9 of 2023 on the file of Learned Family Court, Trichy, and to transfer the same to Family Court, Madurai for disposal.



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2.The learned counsel for the respondent submits that the case may be transferred to any Sub Court, Madurai, instead of Family Court at Madurai.

3.Though the objection was raised by the learned counsel for the respondent against the submission of the learned counsel for the petitioner under Section 8 of the Family Court Act, 1984, the issues stands clarified by the decision of this Court in **Usha @ Ramalakshmi Vs. P.Shanmugam** reported in **2006 (4) CTC 835**. The relevant portion of the said decision reads as under:-

“14. The judgments cited by the learned counsel for the respondent have no direct relation to the question to be adjudicated in this case. On the other hand, this Honble Court as well as other courts have considered the scope and extent of the power of the High Court under Section 24 C.P.C. The Courts dealing with the above issue have consistently held that the power of transfer of the High Court cannot be whittled down or taken away as the matrimonial proceedings are initiated only in the Courts subordinate to High Court or in the Family Court, as the case may be. There is no provision in the [Hindu Marriage Act](#) or the special enactment, namely, [Family Court Act](#), ousting the jurisdiction of Section 24 C.P.C., when a case is sought to be transferred from one District to another of the same State, the High Court has got ample powers to transfer the same and exercise all its powers under Section 24 of C.P.C. Similarly when a transfer is sought for from one State to another, the Supreme Court exercises its power under Section 25 of C.P.C. The sub court, at Tuticorin is a subordinate court to High court and as such the High Court



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has got ample powers and jurisdiction to transfer the proceedings from the Family Court to a subordinate court. Therefore the contention of the respondent regarding competency of the Court is liable to be rejected.

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22. Since both the proceedings relate to same parties, it is desirable to transfer both the proceedings to one Court, so that the disputes can be once in for all adjudicated, which would also avoid multiplicity of proceedings in two different forums. The pleadings and the materials furnished are considered only for the purpose of deciding the transfer petitions and it should not be construed as a finding. It is open to the parties to let in evidence.

In view of the above, H.M.O.P.No.588 of 2004 and M.C.No.3 of 2005 pending on the file of Family Court, Coimbatore are ordered to be transferred to Sub-Court, Tuticorin. The learned Subordinate Judge is directed to dispose of the proceedings within a period of three months from the date of receipt of a copy of this order. Consequently, connected C.M.P Nos. 6824 and 6825 of 2006 are closed. No costs.”

4.Thus, there is no impediment to transfer the case to the Sub Court, Madurai. Consequently, O.S. No. 9 of 2023 is transferred to the Sub Court, Madurai. The Sub Court, Madurai, shall endeavour to dispose the proceedings in O.S.No.9 of 2023 on it being renumbered as expeditiously as possible preferably within a period of 12 months from the date of receipt of a copy of this order.



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C.SARAVANAN, J.

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5.With the above direction, the Transfer Civil Miscellaneous Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

27.04.2023

NCC : Yes / No
Internet : Yes / No
Index : Yes / No

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1.The Family Court,
Trichy.

2.The Sub Court,
Madurai.

Order made in
Tr.C.M.P.(MD) No.180 of 2023
and
CMP(MD)No.3912 of 2023