



Tr CMP (MD) No.248 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Tr.C.M.P.(MD) No.248 of 2023

and

CMP(MD)No.5449 of 2023

G.Raagavi

... Petitioner

-VS-

N.S.Gurudev

... Respondent

PRAYER: Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw the H.M.O.P.No.869 of 2022 on the file of the Family Court, Madurai and transfer the same to the Family Court, Salem.

For Petitioner : Mr.R.Jothiraj

For Respondent : Mr.T.Thevan

ORDER

The present transfer civil miscellaneous petition has been filed to transfer HMOP.No.869 of 2022 from the Family Court, Madurai to the Family Court, Salem.



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2.The petitioner appears to be currently residing in United Kingdom. The marriage between the petitioner and the respondent although solemnized at Sri Murugan Thirukovil, Thiruparankundram, Madurai, the parties have partly lived in Salem and thereafter, in London. While the respondent returned back from London, the petitioner has stayed back in London which has given rise to H.M.O.P.No.869 of 2022 at the behest of the respondent.

3.The learned counsel for the respondent submits that the petitioner is appearing in the Family Court, Madurai through her parents namely, his in-laws. It is further submitted that the Family Court had also permitted the petitioner to appear through video conference. However the respondent has not appeared. That apart her parents are not co operated with the respondent and that whenever, the respondent attempted to see the child in Salem who is residing with the parents of the petitioner, the complaints have been filed against the respondent.

4.The learned counsel for the petitioner however submits that the custody of the child is with the respondent.



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5.I have considering the arguments advanced by learned counsel for the petitioner and the respondent.

6.Section 7 of the Family Court Act, 1984, deals with the jurisdiction which reads as under:-

“7. Jurisdiction.-

(1) Subject to the other provisions of this Act, a Family Court shall- -(1) Subject to the other provisions of this Act, a Family Court shall-”

(a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends. Explanation.-The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:-

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;



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(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise-

(a) the jurisdiction exercisable by a Magistrate of the First Class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and

(b) such other jurisdiction as may be conferred on it by any other enactment. ”

7.The provision is silent as to where the matrimonial proceedings under the provisions of the Family Court Act has to be initiated, where the parties are residing within the jurisdiction of two different Courts and that Section 7 states that wherever the Family Court has been established, the only Family Courts will have the jurisdiction to entertain matrimonial disputes. Therefore, necessarily



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request have to be met to Section 20 of CPC which reads as under:-

“20. Other suits to be instituted where defendants reside or cause of action arises.—

Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction—

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided 1. Subs. by Act 2 of 1951, s. 3, for “the States” (w.e.f. 1-4-1951). 39 that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally works for gain, as aforesaid, acquiesce in such institution; or

(c) The cause of action, wholly or in part, arises.”

8.Although the petitioner is not currently residing in Salem but is residing in London, the fact remains that the petitioner will visit India to stay along with her parents where both the petitioner and the respondent have invested in the property.

9.This Court is inclined to exercise its discretion under Section 24 of CPC by ordering transfer of the case in HMOP.No.869 of 2022 from the file of Family Court, Madurai, to the file of Family Court, Salem. Considering the fact that the



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respondent is also taking care of the minor child, the physical presence of the respondent shall be dispensed with for the routine court proceedings and the respondent shall appear through counsel and he shall appear in person as and when the Court required. In case if the respondent apprehends any threat or unsafe to his life or body, it is open for the respondent to seek for police protection. The Family Court, Salem, shall endeavour dispose of the case as expeditious as possible within a period of 12 months from the date of receipt of a copy of this order.

10. With the above observation, this Transfer Miscellaneous Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

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

- 1.The Family Judge, Madurai.
2. The Family Judge, Salem.



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C.SARAVANAN, J.

Mrn

Order made in
Tr.C.M.P.(MD) No.248 of 2023

Dated:

14.06.2023