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Tr.CMP.No.1010 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2024

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THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

Tr.CMP.No.1010 of 2024

and

C.M.P. No.22125 of 2024

Manashwini Balasundaram

... Petitioner

Vs.

Ashwinkumar Baburaj

... Respondent

PRAYER: Transfer Petition filed under Section 24 of the Code of Civil Procedure to withdraw GWOP.No.355 of 2024 on the file of this Court and transfer the same to the Family Court at Coimbatore and try along with HMOP.No.1937 of 2023.

For Petitioner : Mr.Thenmozhi R.

For Respondent : Ms.Geetha Ramasesham

ORDER

This transfer petition presents a situation which is extremely unique. The issue being whether this Court has the jurisdiction, under Section 24 of the Code of Civil Procedure, 1908 to transfer a proceeding pending before it, to a Court subordinate to it.



Tr.CMP.No.1010 of 2024

Facts leading to Transfer

2. The petitioner is the wife and the husband is the respondent. They solemnized their marriage on 11.03.2016. They shifted their residence to the United States of America and thereafter, they returned to this country. Though the petitioner and the respondent have exchanged allegations as regards the reason for their return to this country, I am not dwelling into the same as it is not germane for the purpose of this case. On their return to India, the petitioner became pregnant and delivered twins on 21.08.2020. Subsequently, the couple developed disputes and differences, and separated. The wife is now residing in Coimbatore and the husband is residing in Chennai.

3. Due to such disputes, the wife decided to put an end to the matrimony and filed a petition for dissolution of marriage in HMOP.No.1937 of 2023 before the Family Court at Coimbatore. Notice was issued to the husband. He was served with summons and in fact, attended a few hearings at Coimbatore. Thereafter, he initiated GWOP.No.355 of 2024, seeking for custody of the children, before the original side of this Court.

4. The wife pleads that on account of the case pending in Chennai, she has to travel regularly from Coimbatore to Chennai and it is imposing an unreasonable burden on her. She further pleads that she is the primary care giver for the children and also responsible for their daily activities including their school and health care.

She points out the distance between Coimbatore and Chennai is about 507 kms and



Tr.CMP.No.1010 of 2024

this puts an enormous physical strain on her. There is no dispute between the parties that the children who are aged about 4 years are studying in Coimbatore. On these grounds, the petitioner has moved the present transfer petition. Fortunately both the parties are financially well off and therefore, the issue of financial distress does not arise.

5. When the matter came up for hearing on 30.09.2024, I requested Ms.Thenmozhi R to serve the entire set of papers on Ms.Geetha Ramaseshan, the learned counsel who represents the respondent/husband in the proceedings on the original side. I posted the matter on 04.10.2024. On the date of hearing, Ms.Geetha Ramaseshan appeared and sought time to file counter. I granted time and the pleadings were completed by the respondent on 22.10.2024.

6. Ms.Thenmozhi R argues that this Court is possessed of the jurisdiction to transfer proceedings pending before it to a subordinate court of competent jurisdiction. She refers to Section 24 of the Code of Civil Procedure. On facts, she pleads the court has to consider the convenience of the parties. As the wife and child are in Coimbatore, she urges the GWOP may be transferred to Coimbatore.

7. Ms.Geetha Ramaseshan argues that a petition under Section 24 of the Code of Civil Procedure is not maintainable. According to her, an application should have been filed only on the Original Side of this Court and not on the appellate side invoking Section 24. On the merits of the case, she points out that as video



Tr.CMP.No.1010 of 2024

conferencing facility permits the appearance of the wife before this Court, from wherever she is residing, the claim of the petitioner that she has to come to Chennai is untenable. Without prejudice to aforesaid submission, she argues that there has to be extraordinary circumstances to transfer a case from this Court to a subordinate court and the present case does not reflect such extraordinary circumstances.

8. I have heard Ms.Thenmozhi R and Ms.Geetha Ramaseshan for the respective parties and have gone through the records.

9. Normally a transfer petition is presented before this Court seeks for transfer from one Court subordinate to this Court to another Court subordinate to it. To my knowledge, for the first time, a case has arisen, where a party seeks to withdraw a proceeding pending on the original side of this Court and send it to a court subordinate to this court in exercise of the power under Section 24 of the Code of Civil Procedure.

History on Power of Transfer

10. Even before the issuance of the Letters Patent, 1862, the power to transfer was given to the High Court under Section 15 of the Indian High Courts Act of 1861.

It read as follows:

“15. Each of the High Courts established under this Act shall have Superintendence over all Courts which may be subject to its appellate Jurisdiction, and shall have Power to



WEB COPY



Tr.CMP.No.1010 of 2024

call for Returns, and to direct the Transfer of any Suit or Appeal from any such Court to any other Court of equal or superior Jurisdiction, and shall have Power to make and issue General Rules for regulating the Practice and Proceedings of such Courts, and also to prescribe Forms for every Proceeding in the said Courts for which it shall think necessary that a Form be provided, and also for keeping all Books, Entries, and Accounts to be kept by the Officers, and also to settle Tables of Fees to be allowed to the Sheriff, Attorneys, and all Clerks and Officers of Courts, and from Time to Time to alter any such Rule or Form or Table; and the Rules so made, and the Forms so framed, and the Tables so settled shall be used and observed in the said Courts, provided that such General Rules and Forms and Tables be not inconsistent with the Provisions of any Law in force, and shall before they are issued have received the Sanction, in the Presidency of Fort William, of the Governor General in Council, and in Madras or Bombay of the Governor in Council of the respective Presidencies.”

11. Pursuant to this legislation empowering the British sovereign to issue a Charter, Queen Victoria issued Letters Patent of 1862. Under the Letters Patent, the power to transfer proceedings to itself was vested with the High Court. This is by virtue of clause 13 of Letters Patent. The said clause reads as hereunder:

“ 13.And We do further ordain that the said High Court of Judicature at Madras shall have power to remove, and to try and determine, as a Court of extraordinary original jurisdiction, any suit being or falling within the jurisdiction of any Court, whether within or without the Presidency of



Madras, subject to its superintendence, when the said High Court shall think proper to do so, either on the agreement of the parties to that effect, or for purposes of justice, the reasons for so doing being recorded on the proceedings of the said High Court.”

12. Subsequently, the colonial legislature enacted the Code of Civil Procedure of 1882. The power of transfer was vested with the High Court. This is found under Section 25 of 1882 Code. Finally the present Code of Civil Procedure of 1908 was enacted. It came into force on the first day of January 1909 and has been in existence ever since. Under this code, the power to transfer is found under Sections 22 to 25. The general power of transfer is found under Section 24 which reads as follows:

“24. General power of transfer and withdrawal

(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage-

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of



WEB COPY



Tr.CMP.No.1010 of 2024

the same; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which is thereafter to try or dispose of such suit or proceeding may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of this section,-

(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b) proceeding includes a proceeding for the execution of a decree or order.

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.”

13. Apart from these statutory powers available with this Court, this court in exercise of Article 227 of the Constitution of India always has the power of transfer of proceedings, when the facts and circumstances and the situation so required. See, ***Service Bar Association v. Union of India, (2005) 1 CTC 321 (DB)***. However, a petition under Article 227 of Constitution of India cannot be utilised for the purpose



of transferring a proceeding from the original side of this court to the subordinate court. This is because the original side of the High Court is a part of the High Court and it is not subordinate to the appellate side. A mere reading of Article 227 shows that the power of transfer can be utilised only if the courts or tribunal are subordinate to this court.

14. There are two other legislations, which I have to take note of. They are the Tamil Nadu Civil Courts Act, 1873 and the Chennai City Civil Courts Act, 1892. Under Section 16 of the Chennai City Civil Courts Act, 1892, this Court has the power under 16(2) to transfer a proceeding pending before it, at any stage, to the file of the City Civil Court, if the Judge sitting on the original side comes to a conclusion that the suit or proceeding ought to have been instituted before the City Civil Court and tried by that Court.

15. The other provision is Section 13 of the City Civil Courts Act, 1873. This enables the High Court to receive appeals, which ought to have been filed before the District Court or the Subordinate Court, when the said courts are closed, on account of vacations, in terms of Section 30 of the Tamil Nadu City Civil Courts Act. This provision deals only with appeals and not with original proceedings. The practice of this Court is that when the appeals are so received, they are heard and interim orders are granted and thereafter, sent to the Court to which the appeals ought to have been filed, on them reopening post vacation. Such appeals has been termed, in practice, as “receive and transmit” appeals.



Tr.CMP.No.1010 of 2024

16. The idea for incorporation of Section 13 of the Tamil Civil Courts Act 1873 is to give a forum for redressal to a litigant, at the time, when the subordinate courts are closed, due to vacations under Section 30 of the said Act.

17. An analysis of all these provisions including the rules of the original side of the High Court shows that the only provision available to move an application for transfer of a suit pending on the file of this court to any other court competent to trial is Section 24 of the Code of Civil Procedure. I will discuss this provision later.

Should the application for transfer made on the Original Side?

18. I will now take up the argument of Ms.Geetha Ramaseshan that an application for transfer of a proceeding on the original side should be made only on the Original side of this Court. A mere glance at the provision of Clause 13 of the Letters Patent shows that the High Court under that Clause, in the exercise of its extraordinary original jurisdiction, has the power to withdraw any suit within the jurisdiction of any court subject to the High Court's superintendence to the High Court. This provision does not enable the Court to transfer a proceeding pending on its file to the file of the court subordinate to it.

19. The interpretation, which Ms.Geetha Ramaseshan seeks to give on clause 13, seems to have been taken by Justice Vepa Ramesam in ***Jumna Bai v. Ramanathan Chettiyar, (1928) 28 LW 684 = (1928) 55 MLJ 690 = AIR 1929 MAD***

29. The learned Judge was of the opinion that an application for transfer should have



been made to the High Court on its original side. The said position was cited before a bench consisting of by Mockett and Kuppuswami Aiyer, JJ. The learned Judges felt that as it raised an important point of practice, the matter should be referred to a Full Bench. The proceedings were thereafter placed before the Full Bench consisting of Leach CJ, Wadsworth and Patanjali Sastri, JJ. The verdict is reported in ***V.S.A.Krishna Mudaliar vs V.S.A.Sabapathy Mudaliar, 58 LW 7.***

20. The Full Bench took a view that the power under Clause 13 of the Letters Patent enables the court to remove the case from the court subordinate to this court for trial before this court and for its determination. It held that Section 24 of the Code of Civil Procedure enables this court to transfer a proceeding to itself and thereafter, re-transfer it to a court subordinate to the High Court. Hence, the view of the Full Bench puts an end to the submissions raised by Ms.Geetha Ramasesham.

21. In addition, it is beyond the cavil that the proceedings under Section 24 of the Code of Civil Procedure are original proceedings. This view had been taken by this Court as early as in 1948 in ***Alla Subbareddi v. Labbireddi Narayanaswamy Reddi, (1948) 61 LW 596 = AIR 1949 MAD 283.*** It is one thing to say that a proceeding is “original” in nature and totally different to hold, the proceedings have to be initiated on the original side.

**Does Section 24 empower the Court to transfer proceedings
pending before it?**

22. Section 24, which has been extracted above, says by virtue of Section



24(1)(a), any suit, appeal or proceedings pending before it for trial or disposal, may be transferred, to any court subordinate to it and competent to try and dispose of the same. When the provision of law is clear, it is the duty of the court to apply the provision as it stands. The underlined portion shows that Section 24 empowers this court to transfer any proceedings (including suits or appeals) pending before it to a court subordinate to it. The only condition being that the court to which it is transferred to should be competent to deal with it. In addition, under Section 24(2), this Court and the District Court are not only empowered, to direct the transferee court to continue with the proceedings at the stage from which it was transferred from the transferor or to conduct de-novo trial, but are empowered also to issue special directions as the case may require at the time of such transfer.

23. I am alive to the view taken by the Bombay High Court in *Anand Issardas Motiani v. Virji Raisi*, 1983 SCC OnLine Bom 126, the observations made by the bench in paragraph 13 of the said judgment has to be read in the context of that case. If the view of the Division Bench, the word “special” found under section 24(2) should be confined only to directing the Trial Court for de-novo trial or continuing the proceedings as it stood before the transfer, then I am not inclined to adopt the said reasoning. This is because to the word “special”, a restrictive meaning cannot be given to the said clause. In fact the Supreme Court in *Rajni Kumar v. Suresh Kumar Malhotra*, (2003) 5 SCC 315, held that the term “special circumstances” should not be enumerated as it is neither practical nor advisable.



Ratio in Srirangam Municipality v. R.V.Palaniswamy Pillai

24. I came across only one judgment that gives an indication on the power of this Court under Section 24. It is *Srirangam Municipality v. R.V.Palaniswamy Pillai*, **AIR 1951 MAD 807**. The issue whether the High Court has the power under Section 24 to withdraw the proceedings pending before a Trial Court and hear the matter and dispose of the Interlocutory applications and send the proceedings back to the original court was the subject matter of interpretation in that case.

25. A brief discussion on the facts of this case is essential. Notice was issued by Srirangam Municipality to one Palaniswami Pillai calling upon him to deliver the vacant possession of an extent of 30 cents of land under his possession. Disputing the notice, R.V.Palaniswami Pillai presented a suit in O.S.No.250 of 1948 on the file of the District Munsif Court at Trichirapalli. He sought for a declaration of title and for injunction. Along with the suit, he moved an application for interim injunction seeking to restrain Srirangam Municipality from interfering with his possession. The learned District Munsif ordered notice in the said application and posted the matter after the summer vacation.

26. After receipt of notice in the injunction application, the Commissioner of Srirangam Municipality entered possession into the disputed property. He removed the fence that had been put up by the plaintiff, and cut and removed the trees thereon.

Since the learned District Munsif Court was closed for vacation, the plaintiff-



Tr.CMP.No.1010 of 2024

Palaniswami Pillai moved two applications before this Court seeking for transfer of the suit to this court and to re-transfer the same after granting him necessary reliefs. He also sought for an order of mandatory injunction directing the Srirangam Municipality to restore the status quo ante.

27. The applications came up before Justice Satyanarayana Rao, who heard the parties to the dispute. Interestingly, it was the very same Judge who delivered the judgment in *Alla Subbareddi*'s case. He ordered transfer of the suit to the file of this Court and after hearing both sides granted interim mandatory injunction as sought for and thereafter, re-transferred the suit to the file of the learned District Munsif Court at Trichirapalli.

28. Aggrieved over the order of mandatory injunction, an appeal was preferred to a Division Bench of this Court invoking Clause 15 of the Letters Patent. The matter was heard by Hon'ble The Chief Justice Mr.P.V.Rajamanttar and A.V.Viswanatha Sastri, J. Pre-eminent counsels of this Court had argued the matter before the Division Bench.

29. The bench held that, in terms of the Appellate Side Rules, an application under Section 24 has to be heard by a Judge sitting in the “admission” court, who has been authorised by the Chief Justice to deal with the said applications. It held under Section 24 of the Code of Civil Procedure, there is power available to this court to transfer a suit pending before the Trial Court to itself and grant an interim order and



re-transfer the same to the original court. The bench rejected the argument that of Mr.V.V.Srinivasa Ayyangar that the application should have been made on the original side. After a detailed discussion, the learned Judges came to a conclusion that the appeal deserves an order of dismissal and accordingly dismissed it.

30. I am referring to this judgment for the following purposes:

(i) The High Court has the power not only to transfer the proceedings from one court to the other court subordinate to it, but also withdraw a suit from a subordinate court to itself. It also possess the jurisdiction to re-transfer such a transferred suit or proceeding to the court from which it was withdrawn or to any other Court.

(ii) It is not necessary that the application should be filed on the original side of this Court. It can be heard and decided by the learned Judge, who has been authorised by Hon'ble the Chief Justice to deal with applications filed under Section 24 of the Code of Civil Procedure.

(iii) If the learned Judge, who hears the application, is of the opinion that the suit need not be retained on the file of this Court, he has the power to re-transfer the proceedings to the Court before which it was originally presented.

(iv) Prior to such re-transfer, a Judge on withdrawal can also pass such orders as the circumstances so warrant.

31. The ratio that flows out of this judgment is that under Section 24, this Court has the power to:-

(i) transfer proceedings from a subordinate to itself;



Tr.CMP.No.1010 of 2024

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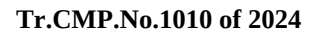
- (ii) on such transfer, pass appropriate order in the suit; and
- (iii) transfer suits pending before it to the court of original jurisdiction or such, other court as it deems fit.

32. It flows from the ratio that proceedings pending on the original side can also be sent to courts of competent jurisdiction subordinate to this court. This is because once the suit is withdrawn to this Court, while dealing with the said proceeding, on such transfer, this court exercise its original jurisdiction over the proceedings. The ratio that this court can re-transfer the proceeding thereafter to the court which was originally filed implies that under Section 24, this Court has the power to withdraw the proceedings pending before it and transfer the same to the court of competent jurisdiction. None of the statutory provisions referred to previously, save Section 24 of the Code of Civil Procedure empowers the court to transfer such proceeding. It is specifically granted under Section 24(1)(a) of the Code of Civil Procedure, 1908.

33. On the basis of the aforesaid discussion, I have to come to a conclusion that by virtue of the powers vested in this Court under Section 24(1)(a) of the Code of Civil Procedure; a suit, appeal or other proceeding that is pending before this Court can be withdrawn and transferred to a competent court subordinate to this Court.

34. It is here that I have to take note of the view of a Special Bench of this

Court in *S.Annapoorni K. Vijay, 2022 SCC Online Mad 4367*. The Special Bench



Decision

36. One being a GWOP for guardianship and the other being the HMOP for



Tr.CMP.No.1010 of 2024

divorce, interests of justice requires that the proceedings are heard and decided by the same Judge. It has been a consistent view of the Supreme Court as well as of this Court that in applications for transfer in matrimonial proceedings and in proceedings relating to guardianship of children, a court has to take into consideration the convenience of the wife and act in the best interests of the children.

37. It is possible that during the course of GWOP proceedings, the learned Judge, who deals with the application, might want to interact with the children. In that situation, I cannot force the minors, who are now aged about four, to travel a distance of about 600 kms to come to Chennai and appear before this Court.

38. The other aspect that I have to take note is that the husband had not invoked the jurisdiction of this court immediately on separation. He appeared before the Family Court at Coimbatore and participated in the proceedings and only thereafter, had filed GWOP.No.355 of 2024.

39. On 22.10.2024, the transfer petitioner/wife appeared before this Court in virtual mode and the respondent/husband was present in person. The petitioner stated, she has no objection for the husband to interact with the children as he is doing now. She also agreed that the husband can visit the children during the first and third weekends of every month at the Oxyzone Mall, Coimbatore.

40. At this stage, the husband has made a request that he should be permitted to interact with the children during week days through video calls. The wife expressed difficulties, for a formal arrangement in this regard on account of the fact that the



Tr.CMP.No.1010 of 2024

children, being young, are not willing to sit in one place and when video calls are being made, they constantly move around. This is only a teething problem (no pun intended). Once the children are aware that the father wants to reach out to them over a video call and if the relationship between the young minds and the father develops, perhaps, they would be in a position to interact regularly as is being done by adults over video calls. For a beginning, the father will be entitled to make video call to interact with the children on every Wednesday at 6.30 pm. Both the parties agree that, in case, the children do not cooperate during the video calls, it would not be held against the mother.

41. In the light of the above discussion, taking into consideration the convenience of the wife and since she had approached the court earlier by invoking the jurisdiction of the Family Court at Coimbatore and since it will be in the best interests of the children that the proceedings be tried at Coimbatore, I am inclined to accept this transfer. Accordingly, GWOP No.355 of 2024 pending on the file of this Court is transferred to the file of the Family Court at Coimbatore to be heard and disposed of along with HMOP.No.1937 of 2023, pending before it.

42. Further, in exercise of the powers vested in this court under section 24(2) of the Code of Civil Procedure and since the parties are in agreement, I am giving the following directions:

(i) the father will be entitled to visit the children on first and third weekends (Saturday and Sunday) at Coimbatore and interact with the children between 10 am



Tr.CMP.No.1010 of 2024

and 12 pm at Oxyzone mall in Coimbatore.

(ii) the father will be entitled to interact with the children via video conferencing on every wednesday between 6.30pm to 7 pm.

(iii) This is only an interim arrangement. Being an application in a Guardian and Wards proceedings, it is always capable of being modified by the learned trial judge dealing with the applications.

(iv) The learned Family Judge on receipt of the papers in GWOP.No.355 of 2024 shall renumber the main proceedings as well as the interlocutory applications and pass appropriate orders, after hearing both sides.

43. The directions given under (i) and (ii) are passed, since it has been agreed upon between the parties.

44. With the above directions, this transfer petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

29.10.2024

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Index : Yes / No

Speaking order : Yes / No

NCC : Yes / No

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Tr.CMP.No.1010 of 2024

1. The Family Court at Coimbatore

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Tr.CMP.No.1010 of 2024

V.LAKSHMINARAYANAN, J.

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Tr.CMP.No.1010 of 2024

29.10.2024