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Tr.C.M.P(MD)No.283 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 23.08.2024

Pronounced on : 10.10.2024

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

Tr.C.M.P(MD)No.283 of 2024

and

C.M.P(MD)No.6445 of 2024

1.D.Thangaraj Pandian
2.M.Dharmalingam

... Petitioners

Vs.

1.V.Chandrakumar
2.Vijayarani

... Respondents

PRAYER : Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw the case in O.S.No.14 of 2018 on the file of the Family Court, Madurai and transfer the same either to the file of any Civil Court at Madurai or Paramakudi, Ramanathapuram District having appropriate jurisdiction to try the above suit.

For Petitioners	: Mr.B.Prahalad Ravi
For R1	: Mr.R.Babu Jaganath
For R2	: Mr.P.Shanmugam



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ORDER

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This Transfer Civil Miscellaneous Petition is filed seeking for an order to withdraw the case in O.S.No.14 of 2018 from the file of the Family Court, Madurai and transfer the same to the file of any Civil Court at Madurai or Paramakudi, Ramanathapuram District.

2. The facts in brief:

The respondents were husband and wife, during their marital life it was alleged that the second respondent got a settlement deed from the first respondent on coercion and subsequently, she created encumbrance to the petitioners. Hence, the first respondent filed a suit in O.S.No.164 of 2014 before the Family Court at Chennai seeking declaration of deeds stands in the name of the second respondent and the petitioners. The first respondent has also filed H.M.O.P.No.2792 of 2015 against the second respondent for divorce before the I Additional Family Court, Chennai. The second respondent filed H.M.O.P.No.290 of 2015 before the III Additional Sub Court, Madurai for restitution of conjugal rights against the first respondent. At the instance of the second respondent in Tr.C.M.P(MD)No.106 of 2016 and Tr.C.M.P(MD)No.831 of 2017, all the above cases were transferred to the Family Court, Madurai. The case



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in O.S.No.164 of 2014 was renumbered as O.S.No.14 of 2018, H.M.O.P. No.2792 of 2016 was renumbered as S.M.O.P.No.1 of 2017 and H.M.O.P No.290 of 2015 was renumbered as H.M.O.P.No.576 of 2018.

3. The learned counsel for the petitioners has submitted that the petitioners are defendants 2 and 3 in O.S.No.14 of 2018, who are strangers to matrimonial cases, they were impleaded as per order in I.A.No.1 of 2023, dated 13.12.2023. It is specifically argued by the petitioners' side that the matrimonial dispute between the respondents has been adjudicated and only the suit alone is pending. As per the provision of Section 7 of the Family Court Act, the Family Court, Madurai has no jurisdiction to try the suit. Moreover, the petitioners are aged and are residing in Ramanathapuram District and they find it difficult to appear before the Family Court, Madurai because the party should appear in each and every hearing. Therefore, this petition is filed and the same may be allowed.

4. The learned counsel for the first respondent has filed a counter and argued that the first respondent filed the suit against the second respondent, who filed Tr.C.M.P(MD)No.831 of 2017 before this Court.



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As per the order passed in Tr.C.M.P(MD)No.831 of 2017, the suit was transferred from the I Additional Family Court, Chennai to the Family Court, Madurai. In those circumstances, the second respondent gave power to the first petitioner in the year 2018. On that basis, the first petitioner sold the suit properties to the second petitioner on 12.12.2018. So, when the matrimonial dispute was subsisting between the respondents, the petitioners got alienated the suit properties in their favour. In that suit, the trial was commenced and at the fag-end of trial, the Family Court directed the first respondent to implead the petitioners as defendants 2 and 3 and accordingly, they were impleaded. The petitioners obtained an order from this Court to dispense with their personal appearance in the above suit. The suit is now at the end of the trial. Hence, the first respondent, who is aged 71 years, will be again prejudiced if this petition is allowed. Therefore, this petition may be dismissed.

5. Heard both sides and perused the records in this petition. The suit properties belonged to the first respondent. The second respondent was the wife of the first respondent. Whiles, due to misunderstanding between them, a divorce case was filed and the original suit was also



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filed. Upon the transfer petition filed by the second respondent in Tr.C.M.P(MD)No.831 of 2017, this Court ordered the transfer of suit in O.S.No.164 of 2017 from the I Additional Family Court, Chennai to the Family Court, Madurai. During the pendency of divorce proceedings and the suit, the second respondent/wife alleged to have alienated the suit properties to the petitioners in the year 2018, and hence, they were impleaded as defendants. Of course, divorce proceedings between the respondents were disposed off. But, the fact remains during subsistence of matrimonial dispute, the suit properties were alienated by the second respondent in favour of the petitioners. Hence, as rightly contended by the learned counsel for the first respondent, as per explanation (c) of Section 7(1) of the Family Court Act, a suit or proceeding between the parties to a marriage with respect of the property of the parties or either of them can be tried by the Family Court.

6. In the judgment relied on by the petitioners in **C.R.P.No.926 of 2016** of this Court (**C.Raja vs. M.Sridevi @ Kalpana**), wife filed the suit for a permanent injunction against the husband restraining him from alienating his property, so a reference was made before the Division Bench of this Court. In that reference, it was observed that the Family



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Court has no jurisdiction U/s.7 of the Family Court Act, to entertain the suit filed by the wife against the husband for perpetual injunction in respect of his property. But, the facts of the case on hand are entirely different. There is a dispute between the husband and wife in respect of the suit property, moreover, the wife alienated the suit properties to the petitioners during the pendency of divorce proceedings. In the above facts and circumstances, this Court comes to the conclusion that this petition has no valid reason to transfer the suit from the Family Court, Madurai to any other civil Court in Madurai or Ramanathapuram.

7. In the result, this Transfer Civil Miscellaneous Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

.10.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

VSD

To

1.The Family Court,
Madurai.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

Pre - Delivery Order made in
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