



Tr.C.M.P(MD)Nos.330 of 2023 and 297 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.08.2024

Pronounced on : 12.11.2024

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

Tr.C.M.P(MD)Nos.330 of 2023 and 297 of 2024

and

C.M.P(MD)Nos.7186 of 2023 and 6773 of 2024

Tr.C.M.P(MD)No.330 of 2023

M.Rajeshwari

... Petitioner

Vs.

M.Ranjith

... Respondent

PRAYER : Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw the petition in H.M.O.P.No.207 of 2022 on the file of the Family Court, Kanyakumari District at Nagercoil and transfer the same to the Sub Court, Melur, Madurai District.

For Petitioner : Mr.M.Jayakumar

For Respondent : Mr.R.J.Karthick



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Tr.C.M.P(MD)No.297 of 2024

Ranjith

... Petitioner

Vs.

Rajeshwari

... Respondent

PRAYER : Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw H.M.O.P.No.133 of 2022 on the file of the Subordinate Court, Melur and transfer the same to the file of the Family Court, Kanyakumari District at Nagercoil to be tried along with H.M.O.P.No.207 of 2022.

For Petitioner : Mr.R.J.Karthick
For Respondent : Mr.M.Jeyakumar

COMMON ORDER

The Transfer Miscellaneous Petition in Tr.C.M.P(MD)No.330 of 2023 is filed by the petitioner/wife seeking for an order to withdraw the H.M.O.P.No.207 of 2022 pending on the file of the Family Court, Kanyakumari District at Nagercoil and transfer the same to the Sub Court, Melur.

2. The Transfer Miscellaneous Petition in Tr.C.M.P(MD)No.297 of 2024 is filed by the respondent/husband seeking for transfer of



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H.M.O.P.No.133 of 2022 on the file of the Sub Court, Melur to the Family Court, Kanyakumari District at Nagercoil to be tried along with H.M.O.P.No.207 of 2022.

3. For the sake of convenience, the parties as arrayed in Tr.C.M.P(MD)No.330 of 2023 is adopted.

4. The respondent and the petitioner are the husband and wife. Their marriage was solemnized on 10.02.2019 as per Hindu rites and customs. Due to misunderstanding between them, they are living separately. The petitioner has filed the petition in H.M.O.P.No.133 of 2022 before the Sub Court, Melur, against the respondent for restitution of conjugal rights. The respondent has filed H.M.O.P.No.207 of 2022 before the Family Court, Kanyakumari at Nagercoil for dissolution of marriage on the ground of adultery and cruelty.

5. The learned counsel for the petitioner/wife has submitted that the petitioner finds it very difficult to travel long distances to attend the Court at Nagercoil from Madurai. Moreover, she has also filed M.C.No. 11 of 2022 before the Judicial Magistrate Court, Melur, seeking



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maintenance, wherein, the respondent has been directed to pay maintenance of Rs.5000/-, but the respondent evaded to pay and filed the petition for dissolution of marriage as a counter case. The learned counsel for the petitioner has relied on citations in **(2005) 12 Supreme Court Cases 237 (Rajani Kishor Pardeshi vs. Kishor Babulal Pardeshi) and AIR 2002 Supreme Court 306 (Sumita Singh vs. Kumar Sanjay and Another)** and submitted that the convenience of the wife is to be preferred over the convenience of the husband in transfer petition arising out of matrimonial cases.

6. The learned counsel for the respondent objected the petition. He further submitted that he has to maintain his aged parents and he is having physical disability. Moreover, he contends that the brother of the petitioner/wife is an advocate, who is practicing in Melur and who is an influential person. Hence, the respondent apprehends that the brother of the petitioner might do anything to achieve the score for his sister.

7. In reply, the learned counsel for the petitioner/wife has submitted a memo along with photos showing that the respondent/husband is riding heavy two wheeler and he is doing heavy



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exercise and so, the respondent/husband is not suffering from any functional disability.

8. Submissions of both sides considered. The respondent and the petitioner are husband and wife. Due to misunderstanding, they are living separately and in such circumstances, the petitioner filed the petition for restitution of conjugal rights before the Sub Court, Melur. The respondent filed the petition for dissolution of marriage before the Family Court, Nagercoil. As per the number of decisions of the Hon'ble Supreme Court, it is well settled proposition of law, whenever the transfer petition is filed in matrimonial disputes, the convenience of the wife should be predominantly looked into and the wife's convenience shall be given preference. From the photos produced by the petitioner, it is revealed that the respondent has no functional disability. Moreover, the transfer is sought to the Sub Court and hence, the appearance of the respondent in each and every hearing need not necessary as like the Family Court. Therefore, taking note of the settled position of the convenience of the wife in matrimonial cases, this Court is of the view that the transfer petition filed by the petitioner/wife is to be allowed and the transfer petition filed by the respondent/husband is to be dismissed.



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9. In the result,

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(i) The Transfer Miscellaneous Petition in Tr.C.M.P(MD)No.330 of 2023 is allowed. The petition in H.M.O.P.No.207 of 2022 on the file of the Family Court, Kanyakumari District at Nagercoil, is hereby withdrawn and transferred to the file of the Sub Court, Melur to be tried along with H.M.O.P.No.133 of 2022 for disposal in accordance with law. The learned Judge, Family Court, Kanyakumari District at Nagercoil, is directed to transmit the entire records pertaining to the case in H.M.O.P.No.207 of 2022 to the transferee Court, within a period of two weeks from the date of receipt of a copy of this order.

(ii)The Transfer Miscellaneous Petition in Tr.C.M.P(MD)No.297 of 2024 is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

12.11.2024

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



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To

- 1.The Family Court,
Kanyakumari District at Nagercoil.
- 2.The Sub Court,
Melur.
- 3.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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and
C.M.P(MD)Nos.7186 of 2023 and 6773 of 2024

12.11.2024