



Tr.C.M.P(MD)No.431 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.08.2024

Pronounced on : 08.11.2024

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

Tr.C.M.P(MD)No.431 of 2024

and

C.M.P(MD)Nos.9432 and 9434 of 2024

1. Shanmugaraja
2. P. Shanmugamuthu
3. V. Ponnambalam

... Petitioners

Vs.

S. Suriyagandhi

... Respondent

PRAYER : Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to call for the entire records and withdraw D.V.C.No.12 of 2023 on the file of the Judicial Magistrate No.II, Kovilpatti and transfer the same to the Family Court, Tirunelveli or any other Court in Madurai.

For Petitioners : Mr.P.M.Vishnuvarthan

For Respondent : Mr.S.Micheal Heldon Kumar



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ORDER

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This Transfer Civil Miscellaneous Petition is filed seeking for an order to withdraw D.V.C.No.12 of 2023 on the file of the learned Judicial Magistrate No.II, Kovilpatti and to transfer the same to the Family Court, Tirunelveli or any other Court in Madurai.

2. The first petitioner and the respondent are the husband and wife. Their marriage was solemnized on 16.09.2021 at Thoothukudi. Due to misunderstanding, they are living separately. The first petitioner filed H.M.O.P.No.428 of 2023 before the Family Court, Tirunelveli, for restitution of conjugal rights. The respondent has filed D.V.C.No.12 of 2023 before the Judicial Magistrate Court No.II, Kovilpatti. Hence, this petition is filed.

3. The learned counsel for the petitioners has submitted that the first petitioner was harassed by the respondent after marriage by alleging that the first petitioner suppressed convulsion disease before the marriage and hence, she left the matrimonial home. The first petitioner filed the restitution of conjugal rights petition before the Family Court, Tirunelveli. As a counter case, the respondent has filed the D.V.case



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before the Judicial Magistrate Court No.II, Kovilpatti. The first petitioner is maintaining his aged parents. The first petitioner finds it very difficult to maintain himself and his parents. Therefore, the petitioners have filed this present petition seeking transfer of DVC petition.

4. Per contra, the learned counsel for the respondent objected the petition. He would further submit that the respondent is residing at Kovilpatti with her parents. In D.V.case, the first petitioner was directed petitioner to pay Rs.7,000/- towards maintenance, but the first petitioner failed to pay and hence, the respondent filed the Execution Petition and the same is pending. At this stage, the petitioners have filed this petition to drag the payment of maintenance.

5. Submissions of both sides considered. The first petitioner and the respondent are husband and wife. Due to misunderstanding, they are living separately and in such circumstances, the first petitioner filed the petition for restitution of conjugal rights against the wife and the respondent filed the petition seeking maintenance under Domestic Violence Act. Both are pending before different Courts. It is well settled proposition of law, whenever the transfer petition is filed in matrimonial



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disputes, the convenience of the wife should be predominantly looked into and the wife's convenience shall be given preference. Moreover, the D.V.case cannot be transferred from the Judicial Magistrate Court to the Family Court or Sub Court. The Full Bench of this Court in **CrI.O.P.SRNos.31852 of 2022** batch cases, has passed the order on 17.11.2022, where it is held in paragraph No.74 (vi) and (vii) as follows:

“74(vi). No power has been vested with the Family Court, either under the D.V.Act or the Family Court Act, 1984, to entertain an application under Section 12 of the D.V.Act. Similarly, no power has been vested with the Civil Court to entertain an application under Section 12 of the D.V.Act.

(vii). Consequently, we hold that an application under section 12 of the D.V.Act cannot be transferred from the Court of the Magistrate, designated under section 27 of the D.V.Act, to the Family Court or the Civil Court. Decisions of learned Single Judges which held to the contra in paragraphs 56 and 57, supra, will stand overruled.”

6. In view of the settled position and also in view of the above decision of the Full Bench of this Court, D.V.C.No.12 of 2023 filed



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U/s.12 of the D.V.Act before the Judicial Magistrate Court No.II,

Kovilpatti cannot be transferred to the Family Court, Tirunelveli.

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

08.11.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

VSD

To

1.The Judicial Magistrate No.II,
Kovilpatti.

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
Tr.C.M.P(MD)No.431 of 2024
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