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Tr.C.M.P(MD)No.123 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.03.2025

Pronounced on : 27 .03.2025

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

Tr.C.M.P(MD)No.123 of 2025

and

C.M.P(MD)No.2887 of 2025

S.Valli Krishnaveni

... Petitioner

Vs.

M.Narayanan

... Respondent

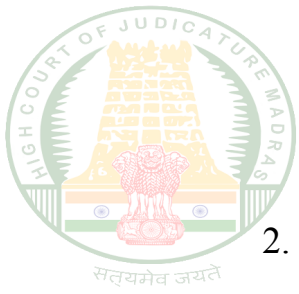
PRAYER : Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw the H.M.O.P.No.421 of 2024 pending on the file of the Family Court, Thoothukudi and transfer the same to the file of the Sub Court, Sivakasi.

For Petitioner : Mr.M.Ashok Kumar

For Respondent : Mr.R.Anand

ORDER

This Transfer Civil Miscellaneous Petition is filed seeking for an order to withdraw the case in H.M.O.P.No.421 of 2024 on the file of the Family Court, Thoothukudi and to transfer the same to the file of the Sub Court, Sivakasi.



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2. The petitioner and the respondent are spouses. Their marriage was solemnized on 06.02.2012 at Arulmigu Sri Sankara Remeshwarar Thirukovil, Thoothukudi as per Hindu rites and rituals. Out of wedlock, they were blessed with a son, who was born on 19.12.2012. Due to misunderstanding, the petitioner and the respondent are living separately for the past 10 years. The respondent has filed the petition in H.M.O.P.No.421 of 2024 before the Family Court, Thoothukudi, against the petitioner for restitution of conjugal rights. The petitioner is now residing at Sivakasi. Hence, the petition is filed.

3. The learned counsel for the petitioner has submitted that the respondent voluntarily left the matrimonial home and filed the divorce petition against the petitioner in H.M.O.P.No.226 of 2013 before the Sub Court, Thoothukudi, which was dismissed and also the appeals preferred by the respondent were also dismissed. The petitioner is living with her mother as her father expired. The petitioner has filed the maintenance case in M.C.No.46 of 2014 on the file of the Judicial Magistrate Court, Sivakasi and the same is pending. Thereafter, the respondent never came to meet the petitioner and her son for the past 11 years. Recently, the petitioner has joined government service and is working as Village Administrative Officer. So, now the respondent has filed the petition in H.M.O.P.No.421 of 2024 against the petitioner for restitution of conjugal



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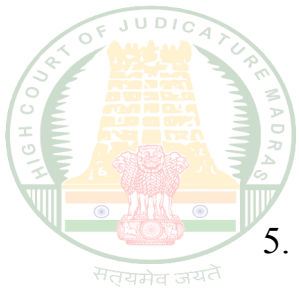
rights and the same is pending before the Family Court, Thoothukudi.

The petitioner finds it difficult to travel to Thoothukudi from Sivakasi.

The petitioner seeks transfer of HMOP.No.421 of 2024 to the Sub Court, Sivakasi, from the Family Court, Thoothukudi. So, the petition may be allowed.

4. Per contra, the learned counsel for the respondent objected the petition.

The learned counsel further submitted that the respondent is a permanent physically impairment person. The dismissal of his earlier divorce petition and its appeal are admitted. However, the respondent is willing to live with the family and he has made several efforts, but the petitioner has not come forward for joint living. So, the respondent has filed the petition U/s.9 of the Hindu Marriage Act. The Court cannot follow the straitjacket formula of transferring case of matrimonial dispute considering the convenience of the wife. The respondent is a 60% physically handicapped person in relation to left lower limb and he finds it difficult to travel. As per Section 2(3) and 12 of the Disabilities Act, 2016, the respondent has the right to access any Court and suitable measures to be done in favour of the respondent as he could not effectively participate in society equally with others. Therefore, the petition may be dismissed.



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5. Submissions of both side and citations considered. The petitioner and

the respondent are husband and wife. Due to misunderstanding, they are living separately and in such circumstances, the respondent filed the petition for restitution of conjugal rights. The respondent has failed in his earlier proceedings for divorce upto SLP before the Hon'ble Supreme Court. The respondent has not disputed that the petitioner is now working as Village Administrative Officer in Sivakasi and only thereafter, the respondent came to file the present petition seeking restitution of conjugal rights. 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.

6. The petitioner seeks to transfer the case to the Sub Court, Sivakasi. As like Family Court proceedings, the presence of the respondent in all hearing is not necessary, unless any direction. The respondent has to appear in the maintenance case in M.C.No.46 of 2014, which is pending before the Judicial Magistrate Court, Sivakasi. The respondent has not taken any steps to transfer the case to his convenient place while he claims rights under the provisions of the Disabilities Act. So, the contention of right under the said Disabilities Act is not acceptable. Whenever matrimonial cases are filed, the wife's convenience is



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only to be looked and this settled position is followed in catena cases by the Hon'ble Supreme Court and High Courts, unless any serious allegations are made against the wife. Therefore, taking note of the settled position of convenience of wife in matrimonial cases and also considering the submissions of both sides, this Court is of the view that the present petition filed by the wife is to be allowed and this Court is inclined to transfer the HMOP.No.421 of 2024 from the Family Court, Thoothukudi to the Sub Court, Sivakasi.

7. In the result, this Transfer Civil Miscellaneous Petition is allowed. The petition in H.M.O.P.No.421 of 2024 on the file of the Family Court, Thoothukudi, is hereby withdrawn and transferred to the file of the Sub Court, Sivakasi for disposal in accordance with law. The learned Judge, Family Court, Thoothukudi, is directed to transmit the entire records pertaining to the case in H.M.O.P.No.421 of 2024 to the transferee Court, within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition is closed.

27.03.2025

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



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To

- 1.The Family Court,
Thoothukudi.
- 2.The Sub Court,
Sivakasi.
- 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
Tr.C.M.P(MD)No.123 of 2025
and
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