



Tr.CMP(MD)No.706 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.04.2025

Pronounced on : 16.06.2025

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

Tr.CMP(MD)No.706 of 2024

and

C.M.P(MD)No.16956 of 2024

Nandhini

... Petitioner

Vs.

Ajithkumar

... 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.380 of 2023 pending on the file of the Family Court, Theni and to transfer the same to the Sub Court, Usilampatti or any other Court having competent jurisdiction.

For Petitioner : Mr.J.Senthil Kumaraiah

For Respondent : Mr.C.Venkatesh Kumar
for M/s.Ajmal Associates



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ORDER

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This Transfer Civil Miscellaneous Petition is filed seeking for an order to withdraw the H.M.O.P.No.380 of 2023 pending on the file of the Family Court, Theni and to transfer the same to the file of the Sub Court, Usilampatti.

2. The petitioner and the respondent are spouses. Their marriage was solemnized on 05.03.2020 as per Hindu rites and customs at Aundipatti, Theni District. Out of wedlock, a male child was born on 26.01.2022. As there was misunderstanding arose between them, the petitioner and the respondent are living separately. It is further alleged that the petitioner was forced to leave the matrimonial house and she is now residing with her family members at her hometown. Thereafter, the respondent filed a petition in H.M.O.P.No.380 of 2023 before the Family Court, Theni, for divorce.

3. The learned counsel for the petitioner has submitted that at earlier point of time, the respondent filed H.M.O.P.No.827 of 2022 for restitution of conjugal rights, upon mediation both lived together for short time, during that period the respondent and his family again started demanding dowry and harassed her, so she was forced to leave the matrimonial home. Now, the petitioner is living with the family members along with 2 years old male child. The petitioner faces



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difficulty in travelling to attend the Court at Theni along with her two years old child. The convenience of the wife is the paramount consideration in the case of transfer petition. Moreover, the petitioner has filed D.V.O.P.No.3 of 2023 before the Judicial Magistrate Court No.1, Usilampatti, against the respondent. In the above circumstances, the petitioner has filed this present Transfer Civil Miscellaneous Petition. In support of the submission, the learned counsel for the petitioner has relied on the rulings reported in **2022 Live Law (SC) 627** and the order passed by this Court in **Tr.C.M.P(MD)No.422 of 2024 dated 18.10.2024**.

4. The learned counsel for the respondent objected the petition. The learned counsel further submitted that the petitioner has filed this petition with a view to drag the proceedings as the main petition is pending for cross examination of P.W.1 and produced the case history. The respondent is looking after his ailing mother. Whereas the petitioner and her mother are working and she has sufficient means to participate in the proceedings. So, he has strong objection to transfer the case.

5. I have heard the submissions of both sides and carefully considered the same along with the records. It is not disputed that the parties are legally wedded spouses and out of wedlock, they have been blessed with a male child. Due to



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misunderstanding, they are living separately. It is well settled proposition by the

WEB Hon'ble Supreme Court in a catena of cases that whenever the transfer petition is filed in matrimonial disputes, the convenience of the wife should be predominantly looked into and the wife's convenience should be given preference. Citations relied on by the petitioner are also perused and the same is in her favour. As per the case of the respondent, the main petition is pending for cross examination of PW1 and so the evidence is not completed and the same is going on. Further, the transfer is sought from the Family Court to Sub Court. So, in Sub Courts, the appearance of parties is not necessary on all hearings, like Family Court, except material hearing or direction of the Court. Moreover, as rightly submitted by the learned counsel for the petitioner, the respondent has to attend the case in D.V.O.P.No.3 of 2023 before the Judicial Magistrate No.1, Usilampatti. Therefore, considering the convenience of both parties and other circumstances, I am inclined to allow this petition, granting transfer as sought by the petitioner.

6. In the result, this Transfer Civil Miscellaneous Petition is allowed. The petition in H.M.O.P.No.380 of 2023 on the file of Family Court, Theni, is hereby withdrawn and transferred to the file of the Sub Court, Usilampatti for disposal in accordance with law. The learned Judge, Family Court, Theni, is



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directed to transmit the entire records pertaining to the case in H.M.O.P.No.380 of

2023 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.

16.06.2025

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

To

- 1.The Family Court,
Theni.
- 2.The Sub Court,
Usilampatti
- 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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