

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.11.2008

Coram

The Honourable MR.JUSTICE M.VENUGOPAL

Tr.C.M.P.No.296 of 2008 &  
M.P.No.1 of 2008

J.Nirmala ... Petitioner

Vs.

M.Shanmugam ... Respondent

This transfer Civil Miscellaneous Appeal has been preferred under Section 24 of CPC to withdraw and to transfer the H.M.O.P.No.104 of 2007 on the file of Sub-Ordinate Judge at Ponneri, Thiruvallur and transfer the same to the Principal Sub-Ordinate Judge at Vellore, Vellore District.

For Petitioner : Mr.R.P.Prathap Singh  
For Respondent : Mr.Jaikumar

O R D E R

The petitioner/wife has filed this Transfer Civil Miscellaneous Petition praying for issuance of an order by this court to withdraw H.M.O.P.No.104 of 2007 on the file of learned Sub-Ordinate Judge, Ponneri, Thiruvallur District and transfer the same to the file of learned Principal Sub-Ordinate Judge, Vellore.

2. The petitioner is the wife. The respondent is the husband. The marriage between the parties has taken place on 5.6.2000 in Vellore District according to Hindu rites and customs in the presence of relatives and friends of both the families. As a result of the wedlock, the petitioner has a son through the respondent born on 6.5.2001.

3. The learned counsel for the petitioner/wife submits that the petitioner is a teacher taking classes for the pupils of 5<sup>th</sup> standard and she is working in Vellore and that the respondent/husband has filed H.M.O.P.No.107 of 2007 on the file of Sub Judge at Ponneri, Tiruvallur District and it is difficult for the petitioner/wife to attend every hearing of the H.M.O.P. case before the Sub Court, Ponneri. The petitioner/wife has to travel a long distance from Vellore to Ponneri for the purpose of hearing of matrimonial case at Ponneri and therefore, prays for transferring the H.M.O.P.No. 104 of 2007 on the

file of Sub Judge at Ponneri, Tiruvallur District to the file of learned Principal Sub Judge, Vellore.

4. The learned counsel for the respondent/husband submits that the petitioner/wife has filed H.M.O.P.No.5/2003 on the file of Principal Sub Judge, Vellore and the same has been dismissed on 10.08.2005 and that the respondent/husband is living with his aged father and mother at Chennai and he has attended each and every hearing of matrimonial proceedings in HMOP No.5 of 2003 before the Principal Sub Judge, Vellore and that there is no prima facie in transferring the Transfer Civil Miscellaneous Petition filed by the petitioner/wife and therefore, prays for dismissing the Transfer Civil Miscellaneous Petition.

5. The learned counsel for the respondent/husband brings it to the notice of this Court that H.M.O.P. No.104/2007 on the file of the Principal Sub Judge, Ponneri has been transferred to the file of Additional District Judge, Fast Track Court No.IV, Ponneri, Tiruvallur District, as per proceedings of Principal District Judge, Tiruvallur in proceedings D.No.2769/A/2008, dated 4.7.2008 and that the same has been taken on file by the Additional District Judge, Fast Track Court No.IV, Ponneri, Tiruvallur District to its original No. in H.M.O.P.No.104 of 2007 on 24.07.2008 and hence, there is no need to allow the transfer Civil Miscellaneous Petition by this Court.

6. This court paid its anxious consideration to the respective contention advanced by the learned counsel and noticed their contentions.

7. It is to be noted that the power of transfer specified in Section 24 of the Civil Procedure Code is a general one and that the said power is very wide and the same is to be exercised by the Court of law with certain permissible limitations.

8. As far as the present case is concerned, the H.M.O.P.No.104/2007 originally on the file of Sub Judge, Ponneri is being transferred to the file of Additional District Judge, Fast Track Court No.IV, Ponneri, Tiruvallur District and since as per the proceedings of learned Principal District Judge, Tiruvallur in its letter dated 4.7.2008 and now the said case is, in its original number, has been taken on file by the said Additional District Judge, Fast Track Court No.IV, Ponneri, Tiruvallur District. Admittedly, H.M.O.P.No.5 of 2003 filed by the petitioner/ wife before the Vellore, learned Principal Sub Judge has been dismissed after full contest on 10.08.2005. Generally, speaking, when the Court of law deals with Transfer Miscellaneous Petition, the convenience of both the parties will be taken into account. However, the convenience of the wife will be taken as precedent over the convenience of the husband. But, ultimately, the justice has be meted out to the parties concerned. In the instant

case on hand, even though, petitioner/wife has taken a stand that she is employed as a teacher in Vellore and she has male child of seven years and she finds it difficult to every hearing of the case at Ponneri, this Court is of the considered view that since the case in H.M.O.P.No.104 of 2007 which is now pending on the file of Additional District Judge, Fast Track Court No.IV, Ponneri, Tiruvallur District and because of another fact that for every hearing of the case the petitioner/wife need not appear in Court and the learned counsel will take care about the case and the petitioner's presence is required only when the case is taken up for trial. This court comes to the inevitable conclusion that it is not equitable for this Court to allow the Transfer Miscellaneous Petition in the interest of justice, based on the facts and circumstances and in that view of the matter, Transfer Civil Miscellaneous Petition fails and the same is dismissed.

9. In the result, Transfer Civil Miscellaneous Petition is dismissed. The learned Additional District Judge, Fast Track Court No.IV, Ponneri, Tiruvallur District is directed to dispose of the H.M.O.P.No.104 of 2007 pending on his file, within a period of forty five days from the date of receipt of a copy of this order and the parties are directed to co-operate with the trial court for completion of proceedings and further, the trial court is directed to provide adequate opportunities to let in oral and documentary evidence as the case may be in the manner known to law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar

rj

To

1. The Additional District Court,  
Fast Track Court No.IV,  
Ponneri, Thiruvallur District.
2. The Sub-Ordinate Judge at Ponneri, Thiruvallur.

- 1 cc To Mr.V.T.Narendiran, Advocate, SR.67522.  
1 cc To Mr.M.Jaikumar, Advocate, SR.67045.

Tr.C.M.P.No.296 of 2008

RSI(CO)  
RVL 08.12.2008