
(2008) 12 MAD CK 0311

Madras High Court

Case No: Tr. C.M.P. No's. 429 and 430 of 2008 and M.P. No's. 1+1 of 2008

S. Lakshmanan

APPELLANT

Vs

L. Mahalakshmi and

Subbaiah and L.

Sivaram rep by his

mother and guardian

1st respondent Mrs. L.

Mahalakshmi

RESPONDENT

Date of Decision: Dec. 23, 2008

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 141, 24
- Hindu Marriage Act, 1955 - Section 9

Citation: (2009) 2 LW 911

Hon'ble Judges: M. Venugopal, J

Bench: Single Bench

Advocate: P. Valliappan, for the Appellant; R. Subramanian, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

M. Venugopal, J.

The petitioner/husband has filed two transfer civil miscellaneous petitions praying this Court to withdraw M.C. No. 68 of 2008 pending on the file of Chief Judicial Magistrate's Court, Trichirapalli and transfer the same to the file of the Principal Subordinate Judge's Court at Erode to be tried along with H.M.O.P. No. 43 of 2008 pending on the file of Principal Subordinate Judge, Erode and to withdraw H.M.O.P. No. 327 of 2008 pending on the file of the Principal Subordinate Judge's Court at Trichirapalli and to transfer the same to the file of the Principal Subordinate Judge's Court at Erode to be tried along H.M.O.P. NO.43 of 2008 respectively. The petitioner in both the petitions is the husband

and respondent is the wife of the petitioner herein. The marriage between the parties has taken place at Tuticorin on 12.12.1994 as per the Hindu rites and Customs as a result of the wed lock, the parties have two children viz., Subbaiah aged 13 years and Sivaram aged 7 years and both of them are presently studying at Tiruchirappalli. It transpires that H.M.O.P. No. 43 of 2008 on the file of the Principal Subordinate Judge, Erode has been filed by the petitioner/husband praying for the relief of dissolution of marriage. The respondent/wife has filed the maintenance case in M.C. No. 68 of 2008 on the file of the Chief Judicial Magistrate's Court, at Trichirapalli and also filed H.M.O.P. No. 327 of 2008 on the file of the Principal Subordinate Judge's Court, Trichirapalli u/s 9 of the Hindu Marriage Act 1955 praying for the relief of restitution of conjugal rights. The petitioner/husband has alleged that he is working as Junior Engineer in the Corporation of Salem and that his wife/respondent and her brothers are harassing and attacking him and that he has lodged a police complaint at Salem and therefore, he was scared to go to Tiruchirapalli because of the threat by the respondent and her brothers and hence he filed transfer petition seeking to transfer the maintenance case filed by the respondent to the file of the Principal Subordinate Judge's Court, Erode to be heard along with H.M.O.P. No. 43 of 2008.

2. In the counter filed by the respondent/wife, it is inter alia stated that in May 2004, the petitioner/husband forced her and children to go to Trichy saying that unless she brings money or get the property, they should not come etc and that the petitioner/husband has given false complaint against her and her brothers stating that an attempt to assault made and that she is afraid of going out of Trichy and there is no bonafide or merit in the petitions which are liable to be dismissed.

3. It is significant to point out that the essential principle concerning the grant of application u/s 24 of CPC is that the application is not to be dealt with in a light-hearted fashion and transfer of a case from one Court to another must not be granted easily/readily for any fancied notion of the applicant/litigant in view of the fact that such transfer of a case from one Judge to another in effect casts doubt on the integrity, competence and reputation of the concerned Judge, unless and until a cogent and convincing ground is made out, transfer ought not to be allowed as a matter of course.

4. Further, the convenience and inconvenience of the parties must be looked into by a Court of law. The aspect of expediency will depend upon the facts and circumstances of each case, but pivotal consideration for exercise of such power must be to meet the ends of justice.

5. In fact the inconvenience mentioned in Section 24 of CPC for transfer of such a case should be of such a nature which may lead to injustice if the party is required to continue the trial at a place where it has been laid or when the Court comes to the conclusion that the suit has been filed in a particular Court for causing injustice. No wonder an application u/s 24 of CPC is in the nature of original proceeding within section 141 of CPC.

6. Though the petitioner/husband has prayed for withdrawing M.C. No. 68 of 2008 pending on the file of the Chief Judicial Magistrate Court, Trichirapalli and transfer the same to the file of the Principal Subordinate Judge's Court at Erode to be tried along with H.M.O.P. No. 43 of 2008 and to withdraw H.M.O.P. No. 327 of 2008 pending on the file of the Principal Subordinate Judge's Court at Trichirapalli and to transfer the same to the file of the Principal Subordinate Judge's Court at Erode to be tried along with H.M.O.P. No. 43 of 2008 respectively, in view of the strained relationship between the parties and since each one is afraid to go out of their places, as a matter of convenience, this Court bearing in mind, the residence of the petitioner at Salem and respondent/wife place at Trichy, directs withdrawal of H.M.O.P. No. 327 of 2008 on the file of Principal Subordinate Judge's Court, Trichy and H.M.O.P. No. 43 of 2008 pending on the file of Principal Subordinate Judge's Court, Erode to the file of Sub Court, Karur as a neutral place (in the interest of respective parties) and withdraws M.C. No. 68 of 2008 pending on the file of the Chief Judicial Magistrate's Court, Trichy to the Magistrate's Court, Karur. The learned Principal Subordinate Judge, Trichy and the learned Chief Judicial Magistrate, Trichy are directed to send the entire records to the Sub Court, Karur and the Magistrate's Court, Karur and on receipt of the same and the Sub Court, Karur and Magistrate Court, Karur are directed to dispose of the above said matters within a period of three months from the date of receipt of a copy of this order, uninfluenced by any of the observations made by this Court in these transfer Civil Miscellaneous Petitions. Liberty is given to the parties to file necessary application before the concerned Court praying for exemption from personal appearance and as and when the said application is filed, the Concerned Court is directed to deal with the same on merits after affording an opportunities to the parties. It is open to the respondent/wife to seek interim alimony as per the Hindu Marriage Act, in the manner known to law. The parties are given the option of seeking police protection by filing necessary application and the concerned Court is to deal with the same on merits. In fine, these transfer miscellaneous petitions are allowed with the above directions/observations. There shall be no order as to costs. Consequently, connected M.P. Nos. 1 and 1 of 2008 are closed.