

**(2007) 04 MAD CK 0115**

**Madras High Court**

**Case No:** Tr.CMP No. 320 of 2006 and M.P. No. 1 of 2006

Daniel Satya Prakash

APPELLANT

Vs

Sylvia Vasthi Daniel

RESPONDENT

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**Date of Decision:** April 19, 2007

**Acts Referred:**

- Christian Divorce Act - Section 32
- Civil Procedure Code, 1908 (CPC) - Section 24

**Hon'ble Judges:** S. Ashok Kumar, J

**Bench:** Single Bench

**Advocate:** R. Subbiah, for the Appellant; K. Govi Ganesan, for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

S. Ashok Kumar, J.

This CRP has been filed by the petitioner/husband u/s 24 CPC to withdraw the IDOP No:20 of 2006 now pending on the file of the Family Court, Madurai to transfer the same to the Principal Family Court, Chennai to try along with OP. No. 2698 of 2006.

2. According to the petitioner the marriage between himself and the respondent/wife was solemnized in the presence of elders of their family at St.George Church, Madurai on 10.5.1989. Thereafter they lived together for 17 years and out of the wedlock they have a female child by name D.Priyadarshini Sarah Pauline in the year 1998. During May 2002, he developed a heart ailment and on the advice given by Vijaya Heart Foundation, Chennai during June 2002, he got operated at Cleveland Clinic Foundation, Cleveland, Ohio, USA and he underwent open heart surgery in which he was given aortic valve conduit and there was a aortic root replacement, right auxiliary artery annulations with Hemashield (aortic valve replacement with conduit and reimplantation of coronary arteries). The whole expenses were met by the company, its employees, friends, relatives and also sale of his sister's jewells and sale of land, apart from borrowing from third parties.

3. It is the case of the petitioner that after return from USA on completion of successful surgery he had constant and regular check ups with Vijaya Heart Foundation viz., Prothrombin test for adjusting the dosage of anticoagulants to keep constant monitoring over the functioning of heart and he resumed to duty on complete recovery and was leading a happy family life with the respondent till 31.5.2006.

4. It is stated that on 31.5.2006 the respondent/wife suddenly left the matrimonial home without his knowledge and information to her parental house along with the daughter and she had taken with her all the jewells, cheque book, ATM cards, title deed of a land etc, Thereafter their parents did not send his wife and daughter along with him and the petitioner visited the her parent's house on 17.6.2006 along with Church Pastors, friends and well wishers and his parents. But the parents of the respondent did not allow him to see and talk to the respondent/wife. They used filthy language and made verbal threats. According to the petitioner the respondent's parents with a fraudulent intention refused to sent his daughter and the respondent and induced the respondent as well. According to him, the respondent forgetting all the hospitality extended all along, a the ill advice and evil designs to spoil the family life, deserted the matrimonial home without any rhyme or reasons. The respondent also filed IDOP. No. 20 of 2006 before the Family Court, Madurai for judicial separation with ulterior motive and on false allegations. He attended the said court on 29.8.2006 and the respondent's parents did not permitted her to even attend the conciliatory proceedings which was scheduled on 11.10.2006. Thereafter he filed a petition in OP.No: 2698 of 2006 before the Family Court, Chennai u/s 32 of the Indian Christian Divorce Act for restitution of Conjugal rights.

5. It is submitted by the learned Counsel for the petitioner that the petitioner/husband is a heart patient as narrated by him in his affidavit and he needs some body to help him and he needs homely food with less oil and there is nobody in Karur to take care of him. Hence he has been transferred to Chennai at his own request and living with his mother and brother. Her sister is also in Chennai to look after him. Thus in view of his heart problem he finds it very difficult to visit Madurai in connection with the IDOP filed by the respondent. Further there is an endanger to his life at the hands of the respondent's parents. Hence the IDOP filed by the wife shall be transferred to Chennai Family Court for joint trial along with the OP filed by the petitioner.

6. Normally, when considering the convenience of the parties, as observed by the Hon'ble Supreme Court, the convenience of the wife shall be given preference, unless the situation warrants otherwise. This is a case in which there exists compelling and strong reasons i.e, the petitioner underwent a open heart surgery and requires care and need, he cannot travel a long distance to reach Madurai, which is nearly 450 Kms from Chennai for every hearing. Therefore, I am of the view

that on medical grounds this Transfer petition shall be allowed. However, if the respondent/wife wants the petitioner to meet her travelling expenses, she can file appropriate petition in that respect before the Prl.Family Court, Chennai.

7. In the result, this Tr.CMP is allowed and the IDOP.No:20 of 2006 pending on the file of the Principal Family Court, Madurai, shall stand transferred to the file of the II Additional Family Court, Chennai. Consequently, M.P.1 of 2007 is closed. No costs.