

(2005) 02 MAD CK 0166

Madras High Court (Madurai Bench)

Case No: Tr. C.M.P. No"s. 498 and 627 of 2005 and CMP. No"s. 499 and 628 of 2005

Felshia Vasanthi

APPELLANT

Vs

1. R. Sekar @ Gunasekar and 2.
Selvakumar

RESPONDENT

Date of Decision: Feb. 21, 2005

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 24, 24(1)(b)(ii), 25
- Divorce Act, 1869 - Section 8
- Family Courts Act, 1984 - Section 11, 19, 7, 7(1), 8
- Hindu Marriage Act, 1955 - Section 21A, 22, 24

Hon'ble Judges: Prabha Sridevan, J

Bench: Single Bench

Advocate: R. Anand, for the Appellant; S.S. Ramasubramanian, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Prabha Sridevan, J.

The petitioner is the wife in the matrimonial proceedings in IDOP. No. 34 of 2003 on the file of the Family Court. Madurai. Transfer CMP. No. 498 of 2004 is for withdrawal of the said OP from the file of Family Court, Madurai to the file of Subordinate Court, Thoothukudi. Pending the above OP, the respondent/husband filed O.S. No. 20 of 2004, which relates to the properties of the spouse and claiming that such a suit would be covered by the extension to Section 7(1) of the Family Courts Act (in Short "the Act").

2. Transfer CMP. No. 627 of 2004 was filed for transfer of O.S. No. 20 of 2004 from the file of Family Court. Madurai to the file of Subordinate Judge. Thoothukudi.

3. The petitioner is the wife and she is residing in Thoothukudi. The proceedings are pending before the Family Court and she is required to be present for every date of

hearing.

4. The learned counsel for the petitioner would submit that the petitioner has to travel a long distance from Thoothukudi to Madurai, which is extremely difficult for the petitioner. The learned counsel for the petitioner would further submit that O.S. No. 20 of 2004 has been filed only to harass her. The claim made in the suit that the suit propones have been purchased in her name benami by the respondent, is devoid of merits.

5. The allegation of interference with the suit properties have also been made only to harass her. The learned counsel for the petitioner would also submit that her personal safety is at stake, since the respondent would not hesitate to engage persons to harm her when she attends the Court on the hearing date. She has a child of tender age and therefore, it is necessary to transfer the proceedings as prayed for.

6. At the time of making oral submission, the learned counsel for the petitioner submitted that the proceedings may be transferred to any District Judge. Reliance was placed on Sumita Singh Vs. Kumar Sanjay and another (AIR 2002 SC 396) wherein at paragraph-3 it is held thus:

3. It is the husband's suit against the wife, it is the wife's convenience that, therefore, must be looked at. The circumstances indicated above are sufficient to make the transfer petition absolute.

7. The learned counsel for the respondent would however submit that the transfer petitions as prayed for cannot be granted, since proceedings before the Family Court, especially a petition under the Indian Divorce Act must be heard by a District Judge and therefore, the transfer CMP, as prayed for cannot be ordered. It is further submitted that it is not correct to state that the son is of a tender age and cannot be left behind. According to the learned counsel, the son is actually in the custody of the respondent and has been educated by him. The minor is studying in Sri Sadhana Matriculation School. The learned counsel also submitted that the petitioner is quite affluent and will have no difficulty in traveling from Thoothukudi to Madurai and that in fact one of the petitioner's sister resides at Madurai and therefore, there will be absolutely no inconvenience caused to the petitioner for attending the hearing. The learned counsel submitted that proper directions may be given to the Family Court Judge to dispose of this matter in the forenoon session, so that the petitioner can return to her home town, if necessary. These submissions were made on facts.

8. Serious objections were raised on point of law to the transfer. Learned counsel for the respondent Thiru. S.S. Ramasubramaniam, Senior member of the Madurai Bar painstakingly drew the attention of this Court to the legal provisions and relevant case law and in fact, very fairly also cited the decision that were not in favour of the respondent. Case-laws referred to are given below:

a) [Ranbir Yadav Vs. State of Bihar,](#)

In this case, there was the practical difficulty of accommodating all the accused in the Court hall, because there were 140 accused. The High Court exercised its power of transfer on the application filed by some of the accused complaining that since all of them could not be accommodated in the Court hall some had to remain outside. The Supreme Court held thus:

So long as power can be and is exercised purely for administrative exigency without impinging upon and prejudicially affecting the rights or interest of the parties to any judicial proceeding it cannot be said that administrative powers must yield place to judicial powers simply because in a given circumstances they co-exist. On the contrary, the instant case illustrates how exercise of administrative powers were more expedient, effective and efficacious. If the High Court had intended to exercise its judicial powers of transfer invoking Section 407 it would have necessitated compliance with all the procedural formalities thereof, besides providing adequate opportunities to the parties of a proper hearing which, resultantly, would have not only delayed the trial but further incarceration of some of the accused. It is obvious, therefore, that by invoking its power of superintendence, instead of judicial powers, the High court not only redressed the grievances of the accused and other connected with the trial but did it with utmost dispatch.

b) [A.R. Antulay Vs. R.S. Nayak and Another,](#)), where the Supreme Court explained that special jurisdiction is conferred by special statute and therefore, jurisdiction can be exercised only when it is specifically provided for either by the Constitution or other laws. In this decision it was also held that the right of appeal was a vested right and cannot be taken away by transfer.

c) *Mallampali Kondayyu and others Vs. The Official Receiver, Nellore and others* (AIR(38) 1951 MAD 676), where a Division Bench of this Court held that an application for transfer to the original side u/s 24(1)(b)(ii) of CPC cannot be entertained on the appellate side, as the "original side" cannot be said to be a "Court subordinate" to the appellate side. The other question that was decided by the Division Bench was whether the Court to which suits etc., are transferred, had jurisdiction to proceed in the matter, if the jurisdiction is excluded by other enactments. In that particular case, the insolvency proceedings sought to be transferred had to be administered under the Provincial Insolvency Act, whereas the original insolvency jurisdiction of the High Court was governed by the Presidency Towns Insolvency Act.

d) *Messrs. Goculdoss Jumnadoss and Co. And another Vs. N.M. Sadasivier and others* (55 MLJ 671): This was also referred to in the Division Bench Judgement cited *supra* (AIR (38) 1951 MAD 676). Here it was that an application to withdraw an insolvency petition from the file of a Sub-Court and transfer it for trial and disposal to the Original Side of the High Court was not maintainable either u/s 24, CPC or

under the Letters Patent. The Original Side of the High Court sitting in the Insolvency is not a Court subordinate to the High court in its appellate jurisdiction. And the High court cannot in the exercise of its Original Insolvency jurisdiction, apply the provincial Insolvency Act.

e [Lakshmi Opticals by Proprietor, E.N. Mohanasundaram Vs. N. Ramakrishnan](#), It was held that under the Tamilnadu Buildings (Lease and Rent Control) Rules (1974), the Rent Controllers and Appellate Authorities are specifically notified to exercise the powers under the Act.

If at all any transfer could be effected of a proceeding under the Act pending before any of the above mentioned Controllers, the transfer could be made only to another Controller mentioned in the notification who alone would be competent to hear and dispose of such proceeding.

9. With regard to matrimonial proceedings, where transfers are sought for by one of the parties thereto, the following decisions were referred:

a) Rukhal John Vs. Francis Ninan (1995(1) K.L.T 687), where it was held that convenience of one party is no ground to deprive the parties of the benefit of the machinery provided by the Family Courts Act.

In that case also, the wife prayed for transfer, it was rejected.

b) In the matter of Ashrayu and others (AIR 1991 Karnataka 10) This relate to the custody of a child and in the said Judgement the reasons why the Law Commission of India made recommendations for establishment of Family Court, are dealt with extensively.

c) Minimal Vs. Anil Kumar and others (AIR 2004 Kerala 107), wherein it has been held thus:

There is no dispute regarding the proposition that the proceedings pending before the Civil Court for the relief's claimed u/s 7 of the Family Courts Act have to be transferred to the Family Court when Family Court is established. If an ex-parte order is passed by the Civil Court, on establishment of the Family Court the petition to set aside an ex-parte order can be decided only by the Family Court as there is complete bar of jurisdiction of the Civil Court to deal with such cases. But with regard to the appeal, there is no such provision in the Act for transferring appeal proceedings to the Family Court. Hence, from the Judgement and decree passed by a Civil Court before establishment of the Family Court appeal cannot be filed u/s 19 of the Act.

d) Smt. Sunila Bali Vs. Ashok Bali (AIR 1987 Rajasthan 79):

It was held that when the wife's petition was filed earlier before the District Court at Bombay and the later petition filed in the Family Court at Jaipur, the High Court at Jaipur can exercise its powers and transfer the petition pending before the Family

Court at Jaipur to be heard along with the proceedings pending before the Civil Court at Bombay.

e) Smt. Nemda Kishor Vs. S.B. Shivaprukash (AIR 1993 Karnataka 87): The High Court ordered transfer of the suit to the place where the wife was leading a destitute life with aged parents.

f) K.R. Srinathi Vs. H. Ramakrishnan (AIR 1990 Madras 330) : 1990-1-L.W. 83 In this it was held that proceedings pending before the Family Court can be transferred u/s 24 of the CPC to any competent Civil Court subordinate to High Court.

10. According to the learned counsel for the respondent in the above three the High Courts had not considered the competency of the transferor and transferee Court and therefore, they cannot be applied. The decision cited supra reported in (AIR 1990 Madras 330) is important, for it considers the extent of power of transfer u/s 24 of the CPC he was held in the above decision that Section 8 has been worded in such a way as to indicate that the Civil Courts territorial jurisdiction is excluded in relation to an area where a Family Court has been constituted in so far as subject matters arrayed under Cls.(a) to (g) under the Explanation appended to sub-sec.(1) of S.7 of the Act. The following extract makes it clear.

The exclusion contemplated therein is not as if one excluding the total territorial jurisdiction of the Civil Courts situate in other parts of the State so as to make it not possible for the High Court to exercise the general power of transfer as contemplated under S.24 of the Code....

In the absence of any special provisions contained in the Act regarding the transfer of proceedings pending before Family Courts prohibiting the exercise of power of transfer by the High Court under S.24 of the Code, when the other concerned Civil Courts available in other parts of the State where no Family Court had been established, are competent to try the subject matter of disputes to be fought in Family Court, it goes without saying that the powers of transfer as contemplated under S.24 of the Code can, by no stretch of imagination, be held to have been whittled or taken away by the provisions of S.8 of the Act. As such, the first ground of attack bristles next to nothing and there can be no legal impediment for transfer of the proceedings pending before the Family Court, in the instant case, to any of the competent Civil Court subordinate to the High Court.

11. Vested right of appeal:

a) [Garikapatti Veeraya Vs. N. Subbiah Choudhury](#), This was relied on by the learned counsel in support of his case that by this transfer remedy would get altered and the right of appeal vests with the suitor on the date of initiation of the proceedings and that it is not a mere matter of procedure but a substantive right. In the above the Supreme Court held as follows:

The legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.

The right of appeal is not a mere matter of procedure but is a substantive right.

The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.

The right of appeal is a vested right and such a right to enter the superior court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse Judgement is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.

This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise.

12. [R. Sridhar Vs. R. Sukanya and Others](#), : This decision is also important since here the learned Judge had held that Section 22 of the Hindu marriage Act which provides that proceedings must be in camera and may not be printed or published cannot be ignored. The learned Judge resisted the contention that since there is no analogous provision in the Family Courts Act 1984 which prohibits any publication and since the Family Courts Act having over riding effect on the Hindu Marriage Act, Section 22 can be ignored. It was held that the Family Courts Act is only a procedural law and the substantive law relating to family matters varies from person to person depending on their personal laws. It was also held that Section 11 of the Act also confers the special right on the party to demand in camera proceedings and if such a demand is made the Court has no discretion to deny it and therefore, the right to privacy recognised by the Hindu Marriage Act is still preserved, notwithstanding the introduction of the Family Courts Act. So the provisions of the Family Courts Act must be read in consonance with the relevant provisions of personal law. We should also not lose sight of the fact that even in the CPC Order. XXXI1A rule. 1 Is there relating to matters concerning the family court.

13. It is the case of the respondent that there is a specific provision under the Indian Divorce Act for transfer and the petitioner cannot invoke Section 24 of the CPC (for short "the Code), since the source of power for transfer is different. Further, as per the provisions of the Act, the appeal is provided for, which may preferred to the High Court and to be heard by one or more Judges, while an appeal against the order passed under the ID Act will he heard only by a Division Bench and therefore, according to the learned counsel, this right of appeal to be heard by two or more judges, which vested in him cannot be taken away by an order of transfer.

14. The following legal provisions are relevant:

I) Section 24 of the Code runs as follows:

24.(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court or the District Court may, at any stage-

a) or

(b) withdraw any suit, appeal or other proceeding in any Court subordinate to it, and

(i) or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same: or

iii)...

II) Section 8 of the Family Courts Act reads thus:

8(a): Where a Family Court has been established for any area.-

(a) no District Court or any subordinate Civil Court referred to in sub-sec.(1) of S.7 shall, in relation to such area, have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to in the Explanation to that sub-section.

III) Section 8 of the Indian Divorce Act provides for and the language used therein is as follows:

8. Extraordinary jurisdiction of High Court - The High Court may, whenever it thinks fit, remove and try and determine as a Court of original jurisdiction any suit or proceeding instituted under this Act in the Court of any District Judge within the limits of its jurisdiction under this Act.

Power of transfer suits.- The High Court may also withdraw any such suit or proceeding, and transfer it for trial or disposal to the Court of any other such District Judge

15. In the present case, it cannot be denied that the High Court has the power to transfer a case from one Court subordinate to it to another so long as the other Court is competent to try the case. Similarly u/s 8 of the ID Act also the High Court has the power. The mere fact that the application has been made u/s 24 of the Code, cannot in any way take away the power that this Court has, to order transfer, since there is nothing in the Indian Divorce Act relating to the power of transfer which excludes the power of transfer that is vested with the High Court under the Code.

16. Of course the petitioner has prayed for transfer to a Subordinate Court, this cannot be granted, if at all the petitioner's prayer for transfer must be considered in her favour, it can only be to another District Court, since all proceedings under the Indian Divorce Act must necessarily be heard by a District Judge. The District Court's jurisdiction will be determined by the place where the parties got married or they

last resided together as man and wife.

17. In the present case, the pleadings show that the parties got married in Thoothukudi. Therefore, District Court at Thoothukudi is competent to hear and try the 1DOP. The objections that the District Judge at Thoothukudi cannot hear a family dispute cannot be accepted and I am in agreement with the decision cited supra (AIR 1990 Madras 330). In an area where Family Court have not been established, the Civil Courts having jurisdiction to try the particular proceedings cannot be said to have no jurisdiction to try the same. Hence, this objection will have to be rejected.

18. As regards the right of appeal, it would be a specious argument to contend that by the transfer, the petitioner's vested right of appeal would be taken away. In (AIR 1988 SC 1531). the Supreme Court was persuaded by the fact that by the transfer the appellant lost one forum of appeal. That is not so in this case. Whether the proceedings are before the Family Court or before the District Court he would have a right of appeal to the High Court. The contention that if the proceedings are transferred from the Family Court to the District Court the litigant would be deprived of the possibility of the appeal being heard by more than two Judges, cannot be accepted. This not a vested right. In [Ittavira Mathai Vs. Varkey Varkey and Another](#), and [P. Mohammed Meera Lebbai Vs. Thirumalaya Gounder Ramaswamy Gounder and Others](#), it was held that "No party has a vested right to have his appeal heard by a specified number of Judges". Therefore, this objection must also be turned down.

19. In Sudha Vs. Vaidyanalhan (2002(2) TLNJ 158), some guidelines have been laid down by K.P. Sivasubramanian, J. which are not exhaustive but illustrative and they are as follows:

I feel that the following guidelines may be helpful in dealing with most of the applications seeking for transfer:-

- (a) If the woman has the custody of any child, born out of wedlock, less than five years of age;
- (b) If any one of the spouse suffers due to any physical disability; or any chronic illness as would render him or her difficult to travel which should be duly certified by a Surgeon/physician in Government Service.
- (c) Where the respondent in Transfer petition does not have objection the transfer or where the respondent in the Transfer petition also resides in the same place.
- (d) Where the joint trial of proceedings pending in two places are sought for it. it would be decided on the basis of the date of filing the petition and the petition filed subsequently will be transferred to the place where the earlier petition had been filed;

(e) Last place of residence should be a permanent place or if temporary, for an indefinite period of residence and not a place where the living was only casual or transitory;

(f) When there is positive evidence such as police complaint etc., at the husband's place, prima facie establishing that the wife had been subjected to physical torture or dowry harassment;

(g) If none of the aforementioned nor any other justifiable reason is available for transfer, then the person seeking transfer should be ready to pay the incidental expenses, like traveling expenses, for stay during the hearing to the other spouse, either a consolidated amount or fixed amount for each hearing should be paid during the previous hearing itself.

The above guidelines are only illustrative situations aimed at avoiding frivolous petitions. Fact case is likely to involve peculiar features which have to be duly considered even though one of the above conditions may exist.

20. In fact, the above Judgement deals at length with the issue of transfer petitions that are so routinely filed at the instance of the wives. The following extracts of the above cited Judgement are reproduced in extenso only because I think they must be borne in mind:

The above petition for transfer is one among several similar petitions in matrimonial proceedings which appear to have become more or less a routine and usual venture indulged mostly by the wives, aimed at shifting the jurisdiction to their own place. A stereo typed allegation is made to the effect that since the petitioner is a woman, the jurisdiction should be shifted to her door steps. I am afraid that such a blind approach results not only in creating an artificial and unfair exception to the jurisdictional issue, throwing aside the law of procedure relating to the jurisdiction, but also results in injustice in individual cases as I would illustrate below.

At the outset it may be stated that the procedural law, neither under the Code of Civil Procedure, nor under the respective personal laws relating to the marriage, makes any distinction between sexes and the jurisdiction is decided on the basis of specific factors such as place where the marriage took place, or where parties resided together or where the respondent resides etc. The choice is given to the petitioner irrespective of the sex of the petitioner. If the wife is the petitioner, she is given the privilege of choosing the forum and the husband has to come from where ever he is and vice versa. As long as a petition is filed correctly in terms of the statutory provisions, it is not expected of the Courts to unnecessarily interfere unless a strong case is made out for transfer of jurisdiction. It cannot be definitely on the basis of sex alone. Convenience of one party cannot be a ground for transfer because it is inherent and it would be positively inconvenient to the other person if the transfer should be against his wish. It has not been shown any statutory provision or binding decision which would require that when a woman seeks a

transfer of the proceedings it should be automatically granted.

On the other hand, orders have been passed only in the light of facts and circumstances of each case. Recently, certain transfer orders had been passed by this Court on a sympathetic consideration of the plight of the women folk especially having the burden of looking after small children. But the sympathy thus shown appears to be wrongly utilised and had resulted in a spate of transfer petitions on behalf of womenfolk on an assumption that their petitions for transfer are routine and should be automatically allowed. With the result, most of the proceedings before the family Courts are delayed and kept pending till the disposal of the transfer petitions.

There cannot be a different yard stick for deciding the question of jurisdiction on the only basis of the sex of the petitioner. If in other civil proceedings such discrimination is not visualised, I fail to understand why it should be different in matrimonial proceedings. Several difficulties have been expressed in many cases on the side of the husbands especially, if they happen to be in Government Service or even under private employment and also facing financial constraints. It is also pointed out that merely for the sake of seeking joint trial, one spouse after receiving notice in a proceedings initiated by other spouse, would file a related proceeding in his or her own convenient place and seek for transfer of the earlier proceedings to be tried along with the later proceedings in the place where the later proceedings had been filed.

While I have myself allowed a few petitions for transfer at the instance of the wives where either she was having custody of a tender child and in one case where there was positive evidence of dowry harassment and in another case there was a police complaint because of physical assault. All the above allegations were positively substantiated. I have mentioned the above illustrative cases in the previous paragraphs only to show that it would be unjust to close our eyes to the facts and circumstances of each case and to mechanically order the transfer of cases only because the petitioner seeking transfer is a woman. It would be an injustice to adopt a dogmatic approach.

There are good wives who are self-effusive sacrificing their life for the sake of errant husbands who are jealous, sadistic, immoral and wayward, drunkards, and forced to tolerate cruel in-laws. Likewise, there are good and fortunate husbands who undergo torture at the hands of avaricious and greedy, spendthrift and termagant wives, and immoral women. There are many mother-in-laws and sister-in-laws who are mainly responsible for dowry harassment. Life and Society is a mixture of good and bad men and women and the Courts cannot ignore the down-to-earth realities and indulge in the luxury of one-sided populist gimmicks. Transfer petitions have to be decided on the merits of each case and not merely on the basis of the sex of the applicant.

Therefore, I feel that in entertaining petitions for transfer, certain basic and broad guidelines have to be formulated to avoid unnecessary spate of petitions before this Court and for the sake of some uniformity and certainty. I am aware that the guidelines cannot be exhaustive and would depend upon the peculiar features of each case.

The provision empowers the District Courts to transfer the case filed in different District Courts from one Court to the other for joint trial. It is specifically provided that the later petition will be transferred to the place where the earlier petition was filed. It is true that the Supreme Court had interpreted Section 21A of the Hindu Marriage Act, as not an exhaustive provision and that the power of the Supreme Court, to issue appropriate orders of transfer u/s 25 CPC was not in any manner curtailed by Section 21A of the Hindu Marriage Act, vide [Guda Vijayalakshmi Vs. Guda Ramachandra Sekhara Sastry](#), it was further held that the power of the Supreme Court u/s 25 CPC was plenary power and will not be excluded by Section 21A of the Hindu Marriage Act. On the same reasoning, it has to be held that the power of the High Court u/s 24 CPC cannot also be restricted by Section 21A of the Hindu Marriage Act - in ordering the transfer in the interest of justice.

21. The special nature of proceedings before Family Court have been dealt with in the judgment reported in Ruichil John Vs. Francis Ninun (1995(I) K.L.T 687). The following observations in this Judgement are relevant:

Family Courts are constituted by the Family Courts Act with a view to make a different approach to the resolution of matrimonial and allied domestic problems. Elaborate machinery has been provided by that Act for counseling, for making attempts to bring the parties together and for deciding the dispute between the spouses. The expertise introduced by the Family Courts Act and the Rules would not be available in an ordinary Civil Court. In fact, the Law Commission in its 59th report had stressed that in dealing with disputes concerning the family, the court ought to adopt an approach radically different from that adopted in ordinary civil proceedings. It was with this also in view that the Family Courts Act was enacted. In such a context, the mere fact that one of the parties to the dispute is living within the jurisdiction of a District Court, which may be nearer to his or her residence or that the District Court might also have jurisdiction to try the cause, is no ground to deprive the parties of the benefit of the machinery provided by the Family Courts Act to solve or reconcile the dispute or the difference between the spouses. I am therefore of the view that the power of transfer which may in here in this Court u/s 24 of the Code of Civil Procedure, should not be exercised so as to thwart the object sought to be achieved by the Family Courts Act and the resolution of disputes between the spouses through the machinery provided by that Act unless there are compelling and unavoidable circumstances. In that view, I find that the transfer prayed for by the petitioner is not liable to be granted.

4. In exercising the powers of transfer this Court must be conscious of the object with which the Family Courts have been established. This Court is not entitled to deal with such applications for transfer in a routine manner as if the so called convenience of one of the parties is the relevant consideration. The so-called convenience of one of the parties is not a consideration sufficient to offset the advantages that arise from the cause being tried in a Family Court established under the Family Courts Act. This approach is warranted in view of the legislative policy clearly discernible from the Family Courts Act. In that view. I find no reason for transferring the proceedings from the file of the Family Court. Quinton to the District Court, Pathanamthitta as prayed for by the petitioner, I dismiss this petition.

The following are the relevant passages from the judgment reported in the matter of Ashraya unci others (AIR 1991 Karnataka 10).

4. Law Commission of India ("the Law Commission"), in its Fifty-fourth Report on the Code forwarded to Government of India in the year 1973, while recommending introduction of a new Order. Order XXXII-A, into the Code to deal with matters relating to family, gave reasons therefore in Chapter 32A of that Report thus:

32A.2. In the administration of justice in disputes relating to the family, one has to keep in mind the human relationship with which one is dealing. The objective of family counseling, as a method of achieving the ultimate object of preservation of the family, is to be kept in the forefront.

32A.3. Litigation concerning or involving affairs of the family, therefore, requires a special approach, in view of the serious emotional aspects involved. For this sensitive area of personal relationship, our ordinary judicial procedure is not ideally suited.....

32A.4; It is now being increasingly realised that-

(a)

(b)

(c) the conventional procedure dominated by the adversary system may not be appropriate for disputes concerning the family.

5. Then the Law Commission, in its Fifty ninth Report on Hindu Marriage Act and Special Marriage Act, forwarded to Government of India in the year 1974, expressed its view on the need of establishment of Family Courts to deal with matters concerning the family by adoption of a human approach thus:

In our Report on the Code of Civil Procedure, we have had occasion to emphasise that in dealing with disputes concerning the family, the Court ought to adopt a human approach- an approach radically different from that adopted in ordinary civil proceedings....

18. ...Provisions are found in the Act which enable the Family Court to dispense justice in matters coming up before it not merely with least expense and without publicity, but expeditiously, as it is not bound by the technical rules of procedure and evidence by which ordinary Courts are bound.

22. At the same time directions are given by the Courts for transfer of proceedings at the instance of the wife because Judges are conscious that they must ensure through law or other appropriate means the practical realisation of the principle of equality. This is one of the core articles of CEDAW (Convention on the Elimination of all forms of Discrimination Against Women). The Supreme Court has held that courts are under an obligation to give due regard to international conventions and norms when there is no inconsistency between them and there is a void in domestic law [Apparel Export Promotion Council Vs. A.K. Chopra](#), So we will have to look at the specific features of the particular case to see if the transfer is necessary.

23. To summarise, transfer petition cannot be ordered for the asking. The procedure laid down in Family Courts Act has been laid down with a special purpose. The fact that there is a provision for transfer in the ID Act can in no way take away the power of the High Court to transfer the proceedings from one Court to another, which is competent to try the said proceedings. There is no vested right to have the appeal heard by a specified number of judges. The Family Court is only procedural law and the petition that comes before it, shall be decided in accordance with the personal law of the parties. Considering the nature of the litigation, the family Courts Act provides for some laxity in procedure. For instance as regards rules of evidence, appearance of parties etc., the Family Courts Act contain special provision but any proceedings to which O.XXX1I-A applies are also dealt with mindful of the nature of litigation. This has been high-lighted in 2005(1)MU 214. Any District Court in an area where a Family Court has been established has the jurisdiction to try a matrimonial dispute, so long as the cause of action as specified in the law applicable to the parties has arisen within the jurisdiction of the said District Court.

24. However, on facts, the petitioner's prayer for transfer must be rejected for the following reasons.

The circumstances warranting transfer indicated in *Sudha Vs. Vaidyanathan* (2002(2) TLNJ 158) do not arise in the present case. Though the petitioner had stated that the child is with her this statement is found to be incorrect. The child is with the father and therefore, on that ground she cannot seek transfer. The making of this one wrong statement is enough to disentitle her from getting any relief. The distance from Thoothukodi to Madurai is not very far and further, it is not disputed that the petitioner has a sister residing in Madurai. No special cause has been made out warranting transfer.

The transfer petition is therefore dismissed with the following directions:

- a) The respondent herein shall not threaten the petitioner in any manner as to cause her apprehension regarding her personal safety.
- b) The respondent shall pay to the petitioner a sum of Rs. 1,500/- for every hearing that she attends:
- c) The learned Family Judge shall endeavour to hear this matter in the fore noon or preferably earlier in the after noon session so that the petitioner may return to her home town on the same day.

With the above directions, both the Tr. CMPs are dismissed. Consequently, CMP No. 499 of 2004 and CMP. No. 628 of 2005 are closed.