



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.10.2016

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

TR.CMP (MD) No.108 2016

and

C.M.P (MD) No.1833 of 2016

M.Girija

...Petitioner

vs.

Kalisuresh

...Respondent

Petition filed under Section 24 of the Civil Procedure Code, to withdraw the H.M.O.P.No.99 of 2015 on the file of the Sub Court at Thoothukudi and to transfer the same to the file of the Additional Sub Court at Tirunelveli and tried along with H.M.O.P.No.12 of 2015 on the file of the Additional Sub Court at Tirunelveli.

For Petitioner : Mr.S.P.Maharajan

For Respondent : Mr.M.Thiruvadi Kumar

ORDER

Short facts as narrated by the petitioner is that the marriage between the petitioner and the respondent was solemnized on 07.11.2011 at Arulmigu Subramania Swamy Temple, Tiruchendur, as per the Hindu rites and customs. After two months, the matrimonial relationship between the petitioner and the respondent was strained and they were separated. Subsequently, the petitioner/wife filed HMOP.No.12 of 2015, under Section 9 of the Hindu Marriage Act, 1955, before the Additional Sub Court, Tirunelveli, seeking the relief of restitution of conjugal rights against the respondent. The said case was adjourned for enquiry and the respondent also filed the counter affidavit.

2.During the pendency of the above HMOP.No.12 of 2015, the respondent filed HMOP.No.99 of 2015 before the Sub Court, Tuticorin, under Section 13(1)(i-a) of the Hindu Marriage Act, 1955, seeking the relief of divorce. Further, it is contended by the petitioner that she is now under the care and custody of her aged father and mother and registered a complaint against the respondent and his family members. Therefore, she cannot frequently travel to Tuticorin for each and every hearing and it will cause great hardship and difficulty to her and accordingly, sought for transfer of HMOP.No.99 of 2015 on the file of the Sub Court, Tuticorin, to the Additional Sub Court at Tirunelveli.



3. The respective counsels both for the petitioner and the respondent advanced their respective arguments.

4. Before deciding this case, it is pertinent to extract Section 19 of the Hindu Marriage Act, 1955:-

"19. Court to which petition shall be presented. Every petition under this Act shall be presented to the district court within the local limits of whose ordinary original civil jurisdiction

(i) the marriage was solemnised, or
(ii) the respondent, at the time of the presentation of the petition, resides, or
(iii) the parties to the marriage last resided together, or
(iiia) in case the wife is the petitioner, where she is residing on the date of presentation of the petition, or
(iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is, at that time, residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of him if he were alive. Jurisdiction of the Court If a marriage is solemnised at a place within the municipal limit and the party reside there only, the family Court would have exclusive jurisdiction to deal with case. The case cannot be transferred to district court on a ground that the husband resides outside the limits of municipal corporation; Arjun Singhal v. Pushpa Karwel, AIR 2003 MP 189."

5. Section 19(iiia) of the Hindu Marriage Act, 1955, enumerates that in case, the wife is the petitioner, petition under this Act shall be presented to the district court within the local limits of whose ordinary original civil jurisdiction, where she is residing on the date of presentation of the petition. The said provision was considered by the Hon'ble Division Bench of the High Court of Madras in W.A.No.1181 of 2009, dated 09.07.2010 and the relevant paragraphs of the said judgment are extracted below:-

"21. The domicile or citizenship of the opposite party is immaterial in a case like this. In case the marriage was solemnized under Hindu Law marital relationship is governed by the provisions of the Hindu Marriage Act. Therefore, Section 19 has to be given a purposeful interpretation. It is the residence of the wife, which determines the question of jurisdiction, in case the proceeding was initiated at the instance of the wife.

22. While considering a provision like Section 19 (iii-a) of the Hindu Marriage Act, the objects and reasons which prompted the parliament to incorporate such a provision has



also to be taken note of. Sub Clause (iii-a) was inserted in Section 19 with a specific purpose. Experience is the best teacher. The Government found the difficulties faced by women in the matter of initiation of matrimonial proceedings. The report submitted by the Law Commission as well as National Commission for Women, underlying the need for such amendment so as to enable the women to approach the nearest jurisdictional court to redress their matrimonial grievances, were also taken note of by the Government. Therefore such a beneficial provision meant for the women of our Country should be given a meaningful interpretation by Courts.'

6. In yet another case in TR.CMP.Nos.138 and 139 of 2006, dated 30.08.2006, the High Court of Madras has held as follows:-

'16. In AIR 2000 SC 3512 (1) (Mona Aresh Goel vs. Aresh Satya Goel), when the wife pleaded that she was unable to bear the traveling expenses and even to travel alone and stay at Bombay, the Supreme Court ordered transfer of proceedings.

In 2000 (10) SCC 304, the Honourable Supreme Court has held that where the petitioner's wife has pleaded lack of money, the same has to be considered.

In 2000 (9) SCC 355, the wife has filed a petition to transfer the proceedings initiated by the husband for divorce, at Bombay. The place of residence of the wife was at Jaipur, Rajasthan. In that case, the petitioner is having a small child and that she pleaded difficulty in going all the way from Jaipur to Bombay to contest the proceedings from time to time. Considering the distance and the difficulties faced by the wife, the Supreme Court has allowed the transfer petition.

In a decision reported in 2005 (12) SCC 395, the wife has sought for transfer of matrimonial proceedings and a divorce petition has been filed by the respondent's husband at Baikunthpur to be transferred to Allahabad, where the petitioner's wife was residing, on the ground that it would be difficult for her to undertake such long distance journey, particularly in circumstances, in which she finds that the proceedings under Section 125 Cr.P.C. was already pending before the Family Court, Allahabad. Considering the difficulties faced by the wife and also the long distance journey, the Honourable Supreme Court was pleased to order transfer of the proceedings to Allahabad.

17. In 2001 AIHC 1567, this Court while dealing with cases relating to matrimonial disputes, set out certain guidelines which would be useful in dealing with matters regarding transfer of divorce or maintenance petitions. The guidelines are extracted hereunder:-

(a) If the woman has the custody of any child, born out of



wedlock, less than five years of age;

(b) If anyone 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 to 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 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;

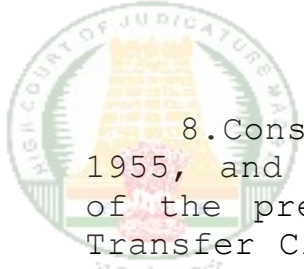
(e) Last place of residence should be a permanent place or if temporary, for an indefinite period of residence and not a place where the living was only casual or transitory;

(f) Where 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; and

(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. This case has been decided on a overall view of the petitions filed by either spouses. The guidelines are only illustrative situations aimed at frivolous petitions filed against each parties. This Court while dealing with cases relating to matrimonial disputes proposes to consider the merits of this case.''

7. In a decision made in TR.CMP(MD)No.108 of 2010, dated 03.03.2011, the Madurai Bench of Madras High Court, has observed as below:-

''18. It is true that section 19 of the Hindu Marriage Act, has been amended by insertion of proviso of (iii)(a) to section 19. Of Course, this amended section 19(iii)(a) gives special preference to the wife to file a petition or defending the case of the husband before the Court within whose jurisdiction she resides. The intention of the legislator is to safe-guard the interest and rights of the women, who are being subjected to harassment and cruelty. But this special preference conferred under section 19(iii)(a) of the Hindu Marriage Act shall not be used to wreck vengeance on the husband. There must be a justifiable cause to select the jurisdiction of the Court where she resides.



8.Considering Section 19(iiiia) of the Hindu Marriage Act, 1955, and the judgments cited above, the facts and circumstances of the present case require consideration and accordingly, this Transfer Civil Miscellaneous Petition is allowed and H.M.O.P.No.99 of 2015 on the file of the Sub Court at Thoothukudi, is directed to be transferred to the file of the Additional Sub Court at Tirunelveli and the same may be tried along with H.M.O.P.No.12 of 2015 as early as possible. No costs. Consequently, C.M.P(MD) No.1833 of 2016 is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS)
Madurai Bench of Madras High Court,
Madurai-23.

To

1)The Subordinate Judge, Thoothukudi.

2)The Additional Subordinate Judge, Tirunelveli.

+1cc to M/s.A.Thiruvadikumar, Advocate in SR.61567

+1cc to M/s.S.P.Maharajan, Advocate in SR.61542

TR.CMP (MD) No.108 2016

19.10.2016

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