



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.11.2016

CORAM

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THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

Tr.C.M.P (MD) No.110 of 2016

and

C.M.P. (MD) .No.1847 of 2016

S.Subathira

... Petitioner

Vs.

K.Periyasamy

... Respondent

Transfer Civil Miscellaneous Petition is filed under Section 24 of Civil Procedure Code to withdraw the H.M.O.P.No.9 of 2015 pending on the file of Sub Court, Sivagangai and to transfer the same to the file of Principal Sub Court, Dindigul.

For Petitioner : Mr.R.Pandi Maharaja

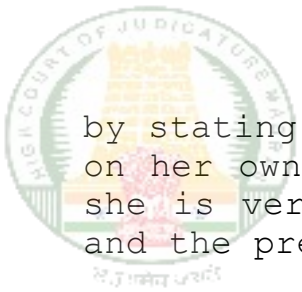
For Respondent : Mr.S.Muniyandi

ORDER

The marriage between the petitioner and respondent has been solemnized on 02.11.2011 at Uluppagudi Village in Natham Taluk as per the Hindu rites and customs. Due to strained relationship between the parties, the petitioner was forced to leave the matrimonial home and now she is living along with her parents. Out of the wedlock, a female child was born to her and now the child is in the custody of the petitioner. The petitioner is unemployed not having independent source of income and living with the support of her parents. The respondent filed H.M.O.P.No.9 of 2016 before the Sub Court, Sivagangai for divorce. Counsel for the petitioner represented that the petitioner has filed H.M.O.P.No.1117 of 2016 before the Subordinate Court, Dindigul for restitution of conjugal rights. The petitioner is unable to spend and travel to defend the case effectively at Sivagangai. This apart she is having a female child aged 4 years and she is not in a position to bring the child with her to Sivagangai often to defend the case. Therefore, she has filed the present petition for transfer.

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2.The learned counsel for the respondent objected the petition



by stating that it is the petitioner who left the matrimonial home on her own volition and not at the instance of the respondent and she is very well in a position to contest the case at Sivagangai and the present petition is filed only to harass the respondent.

3. Considering the arguments and the counter arguments of the respective counsels, this Court is of the opinion that the principles regarding transfer petitions, more specifically in the matters of matrimonial cases in respect of women, are well settled through the decisions of the High Court of Madras, in the following cases:-

(i) The Hon'ble Division Bench of the High Court of Madras in W.A.No.1181 of 2009, dated 09.07.2010 has held as follows:-

'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.'

(ii) In yet another case in TR.CMP.Nos.138 and 139 of 2006, dated 30.08.2006, the High Court of Madras has considered the following judgments of the Hon'ble Supreme Court:-

'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 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.

(iii) 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.'

4. In view of the above pronouncements, the case of the petitioner deserves to be considered and accordingly, this Transfer Civil Miscellaneous Petition is allowed and H.M.O.P.No.9 of 2016 on the file of the Subordinate Judge, Sivagangai and H.M.O.P.No.1117 of 2016 on the file of Principal Subordinate Judge, Dindigul are transferred to the Family Court, Dindigul forthwith to be tried together. No costs. Consequently, C.M.P (MD)No.1847 of 2016 is closed.

Sd/-

Assistant Registrar(CRL)

/True Copy/

Sub Assistant Registrar



To

1.The Principal Subordinate Judge,
Dindigul.

2.The Subordinate Judge,
Sivagangai.

3 The Presiding Judge,
Family Court, Dindigul

+1cc to Mr.R.Pandi Maharaja,Advocate Sr.No. 65871

JAM/10.11.16/KM/4p-5c

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