



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:09.11.2016

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

TR.C.M.P(MD)No.217 of 2016

CMP.(MD).NO.4066 of 2016

M.Sharmiladevi

... Petitioner

Vs.

S.M.Mahendran

... Respondent

Prayer: Petition filed under Section 24 of Civil Procedure Code to withdraw the case in O.P.No.441 of 2016 on the file of the Principal Judge, Family Court at Chennai and transfer the same to the Subordinate Court at Paramakudi for disposal, by allowing the present Transfer Civil Miscellaneous Petition.

For Petitioner : Mr.S.Subbiah

For Respondent : Mr.S.Vellaichamy

ORDER

The present petition is filed seeking to withdraw the case from the file of the Principal Judge, Family Court at Chennai in O.P.No.441 of 2016 and transfer the same to the file of the Subordinate Court at Paramakudi.

2.The marriage between the petitioner and respondent was solemnized on 27.08.2015 at Paramakudi, as per the Hindu Rites and Customs. Due to the strained relationship between the parties, the petitioner was forced to leave the matrimonial home and now residing with her parents.

3.The contention of the petitioner is that she is unemployed and living with her parents and not having any independent source of income and therefore, she is not in a position to spend and defend the case filed by the respondent in O.P.No.441 of 2016 for the relief of declaration of the marriage as null and void, pending before the Principal Judge, Family Court at Chennai.

4. The further contention of the petitioner is that her father is also aged person and suffering from ailments and hence, she will not be in a position to travel from Paramakudi to Chennai, which is 500 kms. away and hence, the petition filed by the respondent in O.P.No.441 of 2016, is to be transferred to the Court at Paramakudi.



5.The learned counsel for the respondent vehemently opposes this petition by stating that the contentions of the petitioner are false and she is very much in a position to travel from Paramakudi to Chennai and therefore, this Petition is to be dismissed.

6. The learned counsel for the respondent further contended that the petitioner left the matrimonial home on her own volition and not at the instance of the respondent and the respondent is not at fault and hence, this petition for transfer is to be rejected.

7.This Court, without going into the merits and demerits of the allegations raised by the respective parties, considers this application only in respect of transfer of the case.

8.The respective counsels both for the petitioner and the respondent are heard.

9.The principles regarding transfer petitions, more specifically in the matters of matrimonial cases 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 Courts. 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:-

''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.

(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 the husband. There must be a justifiable cause to select the jurisdiction of the Court where she resides.''



10. In view of the ration laid down in the aforesaid Judgements and also considering the facts and circumstances of the case, this Court is of the opinion that the present case for transfer deserves to be considered.

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11. At this point of time, the learned counsel for the respondent represented that there is a life threat to the respondent and he has made a specific averment to that effect in the transfer petition filed by him in Tr.C.M.P(MD)No.511 of 2016.

12. For, that the learned counsel for the petitioner undertakes that he will advise his client not to involve in threatening activities and she is ready and willing to conduct the said case in a peaceful manner.

13. Recording the said undertaking, this Court is inclined to pass the order of transfer in favour of the petitioner and accordingly, this Transfer Civil Miscellaneous Petition is allowed and O.P.No.441 of 2016 pending before the Principal Judge, Family Court at Madras, is ordered to be transferred to the file of the Subordinate Court at Paramakudi, forthwith, to be tried along with H.M.O.P.No.80 of 2016. No costs. Consequently, connected Miscellaneous petition is also closed.

Sd/-

Assistant Registrar(Record)

/True copy/

Sub Assistant Registrar

To

1.The Principal Judge, Family Court, Chennai.

2.The Subordinate Judge, Paramakudi.

+1cc to Mr.S.Subbiah, Advocate SR.No.67064 dt.9.11.2016

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09.11.2016

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