



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.11.2016

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

TR.CMP(MD)No.238 of 2016

and

C.M.P(MD)No.4701 of 2016

Mariya Sebastian Kavitha ... Petitioner/Respondent

vs.

L.Gaspar Raja ... Respondent/Petitioner

Prayer: Petition filed under Section 24 of the Civil Procedure Code, to withdraw the case in I.D.O.P.No.21 of 2016 pending on the file of the Hon'ble District Judge, Salem and transfer the same to the file of the Hon'ble District Court, Ramanathapuram.

For Petitioner : Mr.R.Alagumani

For Respondent : Mr.J.Barathan

ORDER

The marriage between the petitioner and the respondent was solemnized on 24.01.2010 as per the Christian rites and rituals. The contention of the petitioner is that she left the matrimonial home, due to the dowry harassment of the respondent and now she is living separately at Kelakarai Taluk, Ramanathapuram District. The petitioner has filed I.D.O.P.No.5 of 2016, for Restitution of conjugal rights, which is pending before the Principal District Court, Ramanathapuram. The respondent has filed I.D.O.P.No.21 of 2016 for dissolving the marriage, which is also pending before the District Court, Salem.

2.The learned counsel appearing for the petitioner contended that the respondent is working at Chennai and residing there. Therefore, it will not be inconvenient for the respondent to attend the case at Ramanathapuram Court, since the IDOP filed by him is pending before the District Court, Salem.

3.The learned counsel appearing for the respondent opposed the petition by stating that the petitioner is working as a Teacher and capable to spend and travel to attend the case at Salem. Further, the petitioner left the matrimonial home at her own



decision and not at the instance of the respondent and therefore, the petition deserves to be dismissed.

4. The fact remains that the respondent is residing at Chennai, but filed the petition for divorce before the District Court, Salem. Therefore, the respondent has to travel from Chennai either to Salem or Ramanathapuram makes less difference as far as the respondent is concerned for conducting the case.

5. The principles with regard to transfer petitions, more specifically, in the matters of matrimonial cases, are in favour of women and the decisions of the High Court of Madras, in the following cases interpreting Section 19(iii)(a) of the Hindu Marriage Act, 1955, also confirm that position:-

(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 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.

6.Considering the facts and circumstances of the case and the balance of convenience of the parties, this Court is inclined to allow the petition filed by the petitioner. Accordingly, the Transfer Civil Miscellaneous Petition is allowed and I.D.O.P.No.21 of 2016 pending on the file of the District Court, Salem is ordered to be transferred to the Family Court, Ramanathapuram, forthwith, and to be tried along with I.D.O.P.No.5 of 2016, which is pending before the District Court, Ramanathapuram, is also ordered to be transferred to the Family Court, Ramanathapuram for joint trial. Consequently, C.M.P(MD)No.4701 of 2016 is closed. No costs.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

vsa

To

1)The District Judge, Salem.

2)The District Judge,Ramanathapuram.

3 The Judge, Family Court, Ramanathapuram

+1CC to Mr.R.Alagumani, Advocate Sr.No.66830

+1CC to Mr.T.R.Jeyapalam, Advocate sr.No.67353

GJM/DB/22.11.16-3p-6C

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