



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.11.2016

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

Tr.C.M.P(MD)No.242 of 2016 and

C.M.P.(MD) .No.4769 of 2016

S.Durgadevi

... Petitioner/Respondent -Wife

Vs.

Venkatesh @ G.Arun

... Respondent/Petitioner-Husband

Transfer Civil Miscellaneous Petition is filed under Section 24 of Civil Procedure Code to withdraw the case in H.M.O.P.No.33 of 2016 pending on the file of Sub Court, Tiruvarur and to transfer the same to the file of Principal Sub Court, Thanjavur and to try along with the H.M.O.P.No.41 of 2016.

For Petitioner : Mr.S.Rajaprabhu

For Respondent : No appearance

O R D E R

The marriage between the petitioner and respondent has been solemnized on 13.03.2013 at Thanjavur as per the Hindu rites and customs. The contention of the petitioner is that the respondent is working as software Engineer in Chennai and has demanded more dowry from the petitioner as well as her parents. Due to the continuous harassment, the petitioner left the matrimonial home and now living along with her parents. The petitioner is unemployed and not having any independent source of income to travel and defend the case. The petitioner filed H.M.O.P.No.41 of 2016 for restitution of conjugal rights before the Principal Subordinate Judge, Thanjavur and the respondent filed H.m.O.P.No.33 of 2016 for divorce before the Subordinate Judge, Tiruvarur.

2.Notice issued to the respondent and the same was returned as refused and the respondent neither appeared in person nor represented through pleader.

3.Considering the facts and circumstances of the case, 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:-

<https://hcservices.ecourts.gov.in/hcservices/>

(1) 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:-



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.33 of 2016 on the file of the Subordinate Judge, Tiruvarur is ordered to be transferred to the Principal Subordinate Judge, Thanjavur forthwith to be tried along with H.M.O.P.No.41 of 2016. No costs. Consequently, C.M.P(MD) No.4769 of 2016 is closed.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub Assistant Registrar

To

1.The Principal Subordinate Judge,
Thanjavur.

2.The Subordinate Judge,
Tiruvarur.

+1cc to M/s.S.Raja Prabhu, Advocate in SR NO.64991

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