



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.11.2016

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THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

Tr.C.M.P(MD)No.352 of 2016 and
CMP(MD) .No.6695 of 2016

Mrs.Regina Perinbam

... Petitioner

Vs.

Gunasekar

... Respondent

Transfer Civil Miscellaneous Petition is filed under Section 24 of Civil Procedure Code to withdraw the case in D.O.P.No.459 of 2016 on the file of the District and Principal Judge, Family Court of Coimbatore and transfer the same to the Principal District Court at Tuticorin.

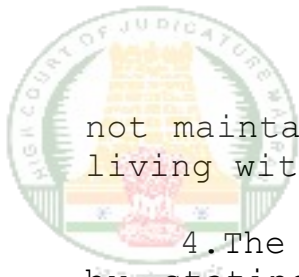
For Petitioner	: Mr.B.N.Raja Mohamed
For respondent	:Mr.A.Gopal

ORDER

The Transfer Civil Miscellaneous Petition is filed to withdraw the case in D.O.P.No.459 of 2016 on the file of the District and Principal Judge, Family Court of Coimbatore and transfer the same to the Principal District Court at Tuticorin.

2. The marriage between the petitioner and the respondent was solemnized on 23.11.2012, as per Christian Rites and Customs. Out of the wedlock, twin babies were born on 18.01.2014 and due to the continuous dowry demands made by the respondent, the petitioner was forced to leave the matrimonial home and living with her parents.

3.The contention of the petitioner is that the respondent filed D.O.P.No.459 of 2016 for divorce before the District and Principal Judge, Family Court, Coimbatore. Further the petitioner states that she is residing in Tuticorin along with her parents and two children. Therefore, she is not in a position to travel about 400 kms from Tuticorin to Coimbatore to defend the case against the respondent. The father of the petitioner is also a senior citizen and he is not in a position to accompany her to travel from Tuticorin to Coimbatore. Further, the respondent is



not maintaining the petitioner as well as the children and she is living with the support of her parents.

4. The learned counsel for the respondent opposed the petition by stating that the petitioner is very well in a position to travel from Tuticorin to Coimbatore to defend the case and she left the matrimonial home on her own volition and further requested to transfer the case to any other Court in Madurai.

5. Considering the rival contentions raised by both sides, this Court is of the opinion that the contention of the respondent cannot be considered at this point of time. Further, 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

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

6. In view of the above judgments of the Division Bench of this Court, it is crystal clear that place of women more specifically in matrimonial cases has to be considered. Further, the facts remain that the petitioner is living with her parents with the twin children and more specifically with the support of the elderly parents. Hence, this Court is inclined to consider the petitioner. Accordingly, D.O.P.No.459 of 2016, pending before the District and Principal Family Court, Coimbatore is ordered to be transferred to the Principal District Court,



Tuticorin forthwith. No costs. Consequently, connected
Miscellaneous Petition is closed.

Sd/
Assistant Registrar(CS-I)

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Sub Assistant Registrar.

To

1. The District and Principal Judge, Family Court, Coimbatore.
2. The Principal District Judge,, Tuticorin

+1CC to M/S.B.N.Rajamohamed, Advocate, SR.No. 64659

Tr.C.M.P(MD)No.352 of 2016 and
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VS

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