



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.10.2016

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

TR.CMP(MD)No.379 of 2016

and

C.M.P(MD)No.7439 of 2016

Radhalakshmi

... Petitioner/Respondent

Vs.

K.Balasubramanian @ Ganesh

... Respondent /Petitioner

PRAYER : Petition filed under Section 24 of the Civil Procedure Code, to withdraw H.M.O.P.No.44 of 2016 pending on the file of the learned Subordinate Court, Ambasamuthiram, Tirunelveli District and transfer the same to the Family Court, at Nagercoil, Kanyakumari District and pass such further orders.

For Petitioner : Mr.P.Muthupandian for
Mr.M.Jagadeeshpandian
For Respondent : No appearance.

ORDER

This Transfer Civil Miscellaneous petition has been filed to withdraw H.M.O.P.No.44 of 2016 pending on the file of the Subordinate Court, Ambasamuthiram, Tirunelveli District and transfer the same to the Family Court, at Nagercoil, Kanyakumari District.

2. The learned counsel for the petitioner is heard.

3. The petitioner states that the marriage between her and the respondent was solemnized on 04.05.2003 as per the Hindu Rites and customs. Due to the strained relationship between the parties, the respondent/husband filed a petition in H.M.O.P.No.44 of 2016 for divorce. The petitioner also filed a Domestic Violence application in D.V.O.P.No.3053 of 2016 before the learned Judicial Magistrate No.II, Nagercoil, Kanyakumari District. The present petition is filed seeking transfer of H.M.O.P.No.44 of 2016 from the file of the Subordinate Court, Tirunelveli to the file of the Family Court, at Nagercoil, Kanyakumari District.

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

4. The petitioner submits that she is a lady and living along



with her parents. Her father is suffering from heart ailment and aged about 79 years and her mother is suffering from blood pressure and ortho pain and both need close care round the clock. The petitioner's daughter is studying in 7th standard at Kavimani Thesiya Vinayagampillai Government Girls Higher Secondary School, Kottar, Nagercoil and she is looking after both her parents and her child. Therefore, she cannot travel from Nagecoil to Ambasamuthiram.

5. Notice was served to the respondent and the name of the respondent is printed in the cause title, in spite of the same, none appeared for the respondent.

6. Considering the facts and circumstances of the case and the principles laid down by this Court in the following decisions, which are extracted below, the case deserves to be considered:-

(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:-

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

7. In view of the above precedents and the facts and circumstances of the case, the TR.C.M.P.(MD)No.379 of 2016 is allowed and the H.M.O.P.No.44 of 2016 pending before the file of the Subordinate Court, Ambasamuthiram, Thirunelveli is ordered to be transferred to the file of the Family Court, Nagercoil, Kanyakumari District. No costs. Consequently, C.M.P.(MD)No.7439 of 2016 is closed.

Sd/-

Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar

To

1. The Subordinate Court, Ambasamuthiram
2. The Family Court, Nagercoil, Kanyakumari District

+1 cc to MR.M.Jagadeeshpandian, Advocate SR.No.62061

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