



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.11.2016

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

TR.CMP(MD)No.466 of 2016

and

C.M.P(MD)No.9497 of 2016

S.Sridevi

... Petitioner

vs.

R.Sabarinathan

... Respondent

Petition filed under Section 24 of the Civil Procedure Code, to withdraw G.O.P.No.10 of 2016 on the file of learned Family Court, Salem and transfer the same to the Family Court, Madurai to try along with H.M.O.P.No.614 of 2014 and H.M.O.P.No.731 of 2014, on the file of Family Court, Madurai.

For Petitioner : Mr.D.Suresh Kumar

For Respondent : No Appearance

ORDER

The marriage between the petitioner and the respondent was solemnized on 25.05.2010 as per the Hindu rites and customs. The respondent has filed petition for Divorce in HMOP.No.731 of 2014 before the Family Court, Madurai and the petitioner has filed HMOP.No.614 of 2014 before the Family Court, Madurai, for Restitution of Conjugal Rights. Both the petitions are pending before the Family Court, Madurai, the respondent has filed G.O.P.No.10 of 2016, before the Family Court, Salem only with an idea to harass the petitioner.

2.The contention of the petitioner is that she is residing at Sivagangai with her child and working as Junior Assistant in Panchayat Development Office at Sivagangai and will not be in a position to travel to Salem along with her child to defend the case filed by the respondent in G.O.P.No.10 of 2016.

3.Notice was served to the respondent and the respondent neither appeared in person nor through his counsel. Hence, the matter is taken up for final hearing.



the Family Court, Madurai and therefore, in the interest of parties, G.O.P.No.10 of 2016 has been filed by the respondent also is to be transferred to Family Court, Madurai, for joint trial and to avoid inconsistency in decision.

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.

WEB COPY 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, this Court is inclined to consider the case of the petitioner and accordingly this Transfer Civil Miscellaneous Petition is allowed and G.O.P.No.10 of 2016 pending before the Family Court, Salem, is ordered to be transferred to the Family Court, Madurai forthwith and to be tried along with H.M.O.P.No.614 of 2014 and H.M.O.P.No.713 of 2014, which are pending before the Family Court, Madurai, for joint trial. Consequently, C.M.P(MD)No.9497 of 2016 is closed. No costs.

Sd/
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar.

To
1)The Judge,
Family Court, Salem.

2)The Judge,
Family Court, Madurai.

+1CC to M/S.D.Suresh Kumar, Advocate, SR.No. 67508

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