



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.07.2016

Coram:

THE HONOURABLE MR. JUSTICE K. KALYANASUNDARAM

Tr.C.M.P. (MD) No.86 of 2016

and Tr.C.M.P. (MD) No.301 of 2016

and C.M.P. (MD) No.1469 in Tr.C.M.P. (MD) No.86 of 2016

and C.M.P. (MD) No.5519 of 2016 in Tr.C.M.P. (MD) No.301 of 2016

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In Tr.C.M.P. (MD) No.86 of 2016:

Rajanambu Soundari

.. Petitioner/Respondent

Vs.

Vijayanand

.. Respondent/Petitioner

PRAYER in Tr.C.M.P.No.86 of 2016: Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, praying to withdraw the case in H.M.O.P.No.71 of 2015 on the file of Sub Court, Paramakudi and to transfer the same to the Family Court, Sivagangai to try the same along with the petition in H.M.O.P.No.9 of 2016.

For Petitioner : Mr.K.Vijayanand

For Respondent : No appearance

In Tr.C.M.P. (MD) No.301 of 2016:

Gunaseelan Vijaya Anandh

.. Petitioner

Vs.

Muthukumar Rajanambu Soundari

.. Respondent

PRAYER in Tr.C.M.P.No.301 of 2016: Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, praying to withdraw the H.M.O.P.No. 9 of 2016 pending before the Family Court, Sivagangai, Sivagangai District and transfer the same to be tried along with H.M.O.P.No.71 of 2015 pending on the file of the Sub Court, Paramakudi, Ramanathapuram District and to fix a specific period of time to complete the case.

For Petitioner : No appearance

For Respondent : Mr.K.Vijayanand

C O M M O N O R D E R

Tr.C.M.P. (MD) No. 86 of 2016:

This petition is filed by wife seeking transfer of H.M.O.P.No.71 of 2015 from the file of Sub Court, Paramakudi to the file of the Family Court, Sivagangai to try the same along with the petition



2. Heard Mr.K.Vijayanand, learned counsel appearing for the petitioner. There is no representation for the respondent.

3.Mr.K.Vijayanand, learned counsel for the petitioner would submit that the petitioner is the wife of the respondent. The marriage between them was solemnized on 13.11.2011 and out of the marriage, a male child namely, Adithya was born to them on 25.08.2012. The petitioner was ill-treated and tortured by the respondent and she was driven out from the matrimonial home along with her child and thereafter, the respondent filed a petition for divorce in H.M.O.P.No.71 of 2015 before the Subordinate Court, Paramakudi with false and frivolous allegations.

4. The learned counsel for the petitioner would further submit that the petitioner is a lady aged 28 years and she is having custody of 4 years old child. She is unemployed and she is residing with her parents. So, the petitioner/wife finds it difficult to defend the case filed at Paramakudi.

5. It is further submitted that the petitioner has filed H.M.O.P.No.9 of 2016 before the Family Court, Sivagangai for restitution of conjugal rights and the same was decreed ex-parte and thereafter, the respondent filed a petition to set aside the ex-parte decree.

6. The learned counsel, relying upon the judgment of the Hon'ble Supreme Court reported in **2008(9) SCC 353 (In Arti Rani Alias Pinki Devi and Another Vs. Dharmendra Kumar Gupta)**, submitted that the case has to be transferred considering the difficulties faced by the petitioner. It has been held in paragraph No.3 of the said judgment as follows:

Having heard the learned counsel for the parties and after considering the materials on record including the statements made in the application for transfer, we are of the view that since the petitioner is a lady having a minor male child, it would be difficult for her to attend the court at Palamu,Daltonganj which is within the State of Jharkhand and quite a distance from Patna where she is now residing with her child;'we allow this application for transfer and the proceedings now pending being Matrimonial (TS) Case No.1 of 2006 in the Court of District Judge, Palamu at Daltonganj within the State of Jharkhand be transferred to the Family Court of Bihar of Patna within the State of Bihar".

7. It is settled law that in the case of matrimonial disputes, convenience of the wife has to be given preference. Following the judgment referred supra, this petition is allowed. No costs. Consequently, connected C.M.P.(MD) No. 1469 of 2016 is closed.

8. In view of the above, the learned Subordinate Court, Paramakudi is directed to transmit the entire records to the file of the Family Court, Sivagangai within a period of two weeks from the date of receipt of copy of this order and the learned Family Judge, Sivagangai,



after obtaining the records on transfer, is directed to try both cases together and dispose of the matters as expeditiously as possible.

Tr.C.M.P. (MD) NO. 301 of 2016:

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Tr.C.M.P.No.301 of 2016 is filed by husband seeking transfer of H.M.O.P.No.9 of 2016 from the file Family Court, Sivagangai to the file of the Subordinate Court, Paramakudi, Ramanathapuram District to be tried along with H.M.O.P.No.71 of 2015 and fix a specific period of time to complete the case.

2. In view of the order passed in Tr.C.M.P(MD) No.86 of 2016, Tr.C.M.P. (MD) No. 301 of 2016 is dismissed. No costs. Consequently, connected C.M.P. (MD).No5519 of 2016 is also dismissed.

Sd/

Assistant Registrar(CS-II)

/TRUE COPY/

Sub Assistant Registrar

To

1.The Subordinate Judge,Paramakudi,Ramanathapuram District.

2.The Judge,Family Court, Sivagangai.

+2ccs to M/S.R.Suriya Narayanan, Advocate in SR.Nos.40794 & 40795

Tr.C.M.P. (MD) .No.86 of 2016
and Tr.C.M.P. (MD) No. 301 of 2016
and C.M.P. (MD) Nos.1469 and 5519 of 2016
29.07.2016

CM

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