



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.07.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

TR. C.M.P (MD) .No.207 of 2017

and

C.M.P (MD) No.4757 of 2017

M.Valarmathi

... Petitioner/Respondent

Vs.

A.Subburaj

... Respondent/Petitioner

PRAYER:- Transfer Civil Miscellaneous Petition filed under Section 24 of the Civil Procedure Code 1908, praying to withdraw the case in H.M.O.P.No.1610 of 2017, on the file of III Family Court at Chennai and transfer the same to the Subordinate Court, Sivakasi, Virudhunagar District.

For Petitioner :Mr.G.Marimuthu

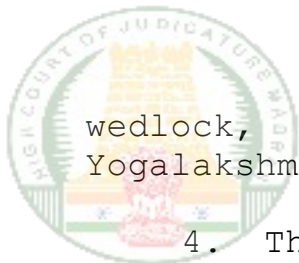
For Respondent :No appearance

ORDER

This Transfer Civil Miscellaneous Petition is filed seeking transfer of H.M.O.P.No.1610 of 2017, from the file of III Family Court at Chennai to the Subordinate Court, Sivakasi, Virudhunagar District.

2. Though notice has been served on the respondent, he has not appeared in person or through counsel. Heard Mr.G.Marimuthu, learned counsel appearing for the petitioner.

3. The learned Counsel appearing for the petitioner would submit that the marriage between the petitioner and the respondent was solemnized on 08.06.2012 at Pudhusurangdi Nadar Uravinmurai Marriage Hall, Royapuram, Chennai-13 as per Hindu Rites and time of marriage, 16 3/4 sovereign of gold jewels and Rs.60,000/- cash were given to the respondent as dowry. The respondent is running a small stationery store at Chennai. Due to



wedlock, the petitioner gave birth to a female child viz., Yogalakshmi.

4. The learned Counsel further submitted that after the delivery of female child, the attitude of the petitioner's husband and character have been changed and he is started to avoid the petitioner directly and indirectly and all the efforts taken by the family members ended in vain. Now the petitioner is living with her mother along her 8 months old female child.

5. The learned Counsel for the petitioner also submitted that the petitioner's husband now filed a petition for divorce in H.M.O.P. No.1610 of 2017 before III Family Court, Chennai, stating false and mischievous reasons. The petitioner has passed only 8th standard and she has no income to meet the travel expenses from Chennai to Sivakasi.

6. Notice sent to the respondent through Court as well as privately has been returned as unclaimed. The Honourable Supreme Court in *State of M.P. Vs. Hiralal and Others* reported in (1996) 7 Supreme Court Cases 523, held that in cases where notices were sent to the correct address and returned with an endorsement "not available in the house", "house locked" and "shop closed", notice must be deemed to have been served. In view of the above decision, notice in this case is not necessary to the respondent, since it was unclaimed by him.

7. I am satisfied with the reasons stated in the affidavit filed in support of this petition. It is well settled law that convenience of woman is to be taken into consideration at the time of considering transfer applications as held by the Supreme Court in the judgment reported in 2008(9)SCC 353 (*Arti Rani @ Pinki Devi and another Vs. Dharmendra Kumar Gupta*). I am inclined to allow this Transfer Civil Miscellaneous Petition. Accordingly, this petition is allowed with the following directions:

i) The learned Judge, III Family Court, Chennai, is directed to transmit the entire records in H.M.O.P.No.1610 of 2017 to the file of the Subordinate Court, Sivakasi, Virudhunagar District within a period of two weeks from the date of receipt of copy of this order.

ii) the learned Subordinate Judge, Sivakasi, Virudhunagar District, after obtaining the records on transfer, is directed to dispose of H.M.O.P.No.1610 of 2017 as expeditiously as possible in accordance with law.



No costs. Consequently, connected C.M.P.(MD) No.4757 of 2017 is closed.

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/True Copy/

Sd/-
Assistant Registrar(CSI)

Sub-Assistant Registrar

To,

1. The Family Court Judge,
III Family Court, Chennai.
2. The Subordinate Judge,
Sivakasi, Virudhunagar District.

+One cc to Mr.G.Marimuthu, Advocate, SR.No.66881

ssl/rmk
RL/4C/3P/SKN/RSK/SAR1/27/7/2017

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