

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 21.12.2017****CORAM:****THE HONOURABLE MR.JUSTICE S.BASKARAN**

Tr.C.M.P. (MD) No.467 of 2017
and
C.M.P. (MD) No.10643 of 2017

P.Sendoori

.. Petitioner

Vs.

M.Murali

.. Respondent

Prayer: This Transfer Civil Miscellaneous Petition is filed under Section 24 of Civil Procedure Code, praying to withdraw H.M.O.P.No.137/2017 on the file of Family Court, Dharmapuri and transfer the same to the Family Court, Madurai for trial.

For Petitioner : Mr.S.Venkatasubramanian

For Respondent : Mr.K.Kannan

O R D E R

The petitioner has come forward with this petition seeking to transfer the H.M.O.P.No.137/2017 pending on the file of the Family Court, Dharmapuri and transfer the same to Family Court, Madurai.

2.The petitioner states that her marriage with the respondent/husband take place on 28.08.2010 and she happily live in the matrimonial home for one year. Thereafter, the respondent began to torture her for non pregnancy. Subsequently, the petitioner gave birth to a male child on 30.01.2016 and even after there was no change in the attitude of the respondent. Since the respondent continue to torture her she decided to resolve the marriage and filed H.M.O.P.No.4/2017 on the file of Family Court, Madurai and the same is pending. While so, the respondent herein filed H.M.O.P.No.137/2017 on the file of Family Court, Dharmapuri seeking restitution of conjugal rights. The petitioner states that she has to travel about 600 kilo meters away from her residence for each and every hearing at Dharmapuri. Since she is living with her minor child with her parents she finds it difficult to travel to Dharmapuri. Further she is depends on her aged father for her livelihood and she is not having any income on her own. Hence she seeks transfer the H.M.O.P.No.137/2017.



3. On the other hand the learned counsel for the respondent who opposed the petition by filing counter contends that the averments made by the petitioner is not true. It is further contended that she is native of Dharmapuri and she is not living in Madurai and as such the plea for transfer is unnecessary and unwarranted.

4. However, the same is disputed by the learned counsel by the petitioner by stating that she has filed the Aadhar card of the petitioner to show the residential address at Madurai where she is residing. Moreover, the learned counsel appearing for the petitioner also relied upon the judgment reported in **Durga Vs. R. Mohan Ganesh** reported in (2011) 5 MLJ 454 to contend that the convenience of lady should be given primary consideration in such matters. In the judgment it is held as follows:

"It is true that Section 19 of the Hindu Marriage Act, has been amended by insertion of proviso of (iii) (a) gives special preference to the wife to file a petition of defending the case of the husband before the Court within whose jurisdiction she resides. The intention of the legislator is to safeguard 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."

This Court while considering the rival contentions, feels it is apparent that already H.M.O.P.No.4/2017 filed by the petitioner/wife seeking dissolution of marriage is pending on the file of Family Court, Madurai, wherein she has given her address stating that she is residing in Madurai only and considering the fact that she is unemployed and depends on her father, this Court is inclined to entertain this petition.

5. In the result, this petition is allowed. H.M.O.P.No.137 of 2017 pending on the file of the Family Court, Dharmapuri, is directed to be transferred to the file of the Family Court, Madurai, for disposal. The Transferee Court is directed to expedite the trial and to dispose of as early as possible. Consequently, connected Civil Miscellaneous petition is closed.

Sd/-

Assistant Registrar(AE)



To

1. The Judge, Family Court, Dharmapurai.

2. The Judge, Family Court, Madurai.

+1cc to Mr.K.Kannan, Advocate Sr.No.94658

+1cc to Mr.S.Venkatasubramanian, Advocate, Sr.No.94433

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VB/SV/MMS/SAR4/09/01/2018/3P/5C

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