



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.09.2017

CORAM

THE HONOURABLE MRS. JUSTICE J. NISHA BANU

TR.C.M.P(MD) No. 63 of 2017

and

CMP(MD) No. 1558 of 2017

G.Pitchaimani

...Petitioner

Vs.

R.Tamilarasi

.. Respondent

Prayer: Transfer Civil Miscellaneous Petition is filed under Section 24 of Civil Procedure Code to withdraw and transfer the petition made in H.M.O.P.No.491 of 2016 on the file of Family Court, Coimbatore to Sub Court, Theni.

For Petitioner : Mr.P.Chandrasekaran

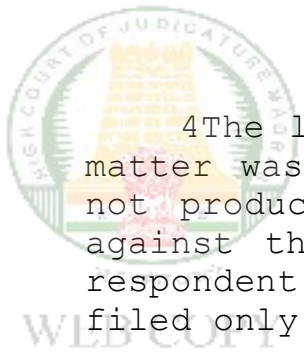
For Respondent : Mr.A.K.Azay Kumar

ORDER

The Transfer Civil Miscellaneous Petition is filed to withdraw and transfer the petition made in H.M.O.P.No.491 of 2016 on the file of Family Court, Coimbatore to Sub Court, Theni.

2.The petitioner/husband would among other things state that the marriage between the him and the respondent was solemnized on 26.08.2002 at Sivanmalai, Tirupur District and out of wedlock two children were born to them namely Pradeep and Prithiv. Thereafter, dispute arose between them and the petitioner/husband has made many other allegations against the respondent/wife. The respondent has filed petition seeking divorce before the Family Court, Coimbatore in H.M.O.P.No.491 of 2016. The petitioner filed a petition for conjugal rights in H.M.O.P.No.122 of 2016 on the file of Sub Court, Theni and has sought for transfer of the HMOP from Coimbatore to Theni. Admittedly, the children are at the custody of the respondent/mother.

3.The learned counsel for the petitioner would submit that the petitioner had filed G.W.O.P.No.30 of 2016 on the file of the District Court, Theni and as per the statutory provisions of the Act, GWOP can be filed only before the jurisdictional Court, where the children are residing and admittedly, the children are residing at Coimbatore.



4The learned counsel for the respondent would submit that the matter was referred to the mediation and that the petitioner has not produced any documents to substantiate the allegations made against the respondent in the affidavit. Due to harassment, the respondent had filed the petition for divorce. This petition is filed only to prolong the issue.

5.Heard the learned counsel for the petitioner and the learned counsel for the respondent.

6.Now, the learned counsel for the petitioner has got no objection for transferring the case pending in HMOP.No.122 of 2016 on the file of Sub Court, Theni, to the file of Family Court, Coimbatore, where the HMOP.No.491 of 2016 filed by the respondent/wife is pending and also the GWOP No.30 of 2016 on the file of District Court, Theni to the file of District Court, Coimbatore, provided that the matter may be completed within a time prescribed by this Court.

7.Considering the submissions made by both sides and also considering the fact that it is a well settled law that whenever, the transfer application is filed in matrimonial disputes, the convenience of the wife shall be given preference, as held by the Hon'ble Supreme Court in the Judgments reported in **2008(9) SCC 353 (Arti Rani @ Pinki Devi and another Vs.Dharmendra Kumar Gupta) and AIR 2002 SC 396 (Sumita Singh Vs. Kumar Sanjay and another)**.

8.Accordingly, this Transfer Civil Miscellaneous Petition is disposed of with the following directions:-

i) The learned Sub Judge, Theni is directed to transmit the entire records in HMOP.No.122 of 2016 on the file of Sub Court, Theni, to the file of the Family Court, Coimbatore, where the HMOP.No.491 of 2016 filed by the respondent/wife is pending, within a period of six months from the date of receipt of copy of this order.

ii)The learned District Judge, Theni is directed to transmit the entire records in GWOP.No.30 of 2016 to the file of the District Court, Coimbatore.

(iii)The Family Court Judge, Coimbatore, after obtaining the records on transfer, is directed to dispose of both HMOP.No.122 of 2016 and HMOP.No.491 of 2016 as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order, in accordance with law.

(iv)The District Judge, Coimbatore, after obtaining the records on transfer, is directed to dispose of the GWOP.No.30 of 2016, as expeditiously as possible, preferably within a period of six months from the date



of receipt of a copy of this order, in accordance with law.

No costs. Consequently, connected Miscellaneous Petition is closed.

WEB COPY

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Judge
Family Court ,
Coimbatore
2. The Subordinate Judge, Theni.
3. The District Judge, Theni.
4. The District Judge, Coimbatore.

+1cc to Mr.P.Chandrasekaran, Advocate Sr.No.76770

+1cc to Mr.A.K.Azay Kumar, Advocate Sr.No.76896

RJ2

VB/MR/KKR/SAR3/03.10.2017/3P/7C

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06.09.2017