

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P. No.1077 of 2017

and C.M.P.No.22239 of 2017

D.Sathiya Sukumari

... Petitioner

Vs.

Raju @ Rajendran

... Respondent

Prayer:- Petition has been filed under Section 24 of C.P.C., to withdraw and transfer the petition in HMOP No.70 of 2015 pending on the file of the Subordinate Judge Court, Pollachi and to transfer the same to Additional Family Court, Coimbatore for further proceedings alongwith the petition in HMOP No.765 of 2014.

For Petitioner : M/s.J.Franklin

For Respondent : No appearance

O R D E R

This petition is filed to withdraw the petition in HMOP No.70 of 2015 pending on the file of the Subordinate Judge Court, Pollachi and transfer the same to Additional Family Court, Coimbatore for further proceedings alongwith the petition in HMOP No.765 of 2014.

2. The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was conducted on 18.10.1996 as per Hindu rites and customs at Kamadhenu Kalyanamandapam, Soolisvaranpatti, Pollachi. After marriage, both were living together in the matrimonial home at Theni Estate, Valparai. Due to difference of opinion, the petitioner and the respondent are living separately. The petitioner has filed H.M.O.P.No.765 of 2014 on the file of the Additional Family Court, Coimbatore against the respondent for divorce and the same is pending. While so, the respondent filed H.M.O.P No.70 of 2015 before the Sub Court, Pollachi for restitution of conjugal rights, only to harass the petitioner.

3. According to the petitioner, she is the only bread winner of the family and taking care of her two children by doing coolie work. Further, it is difficult for her to meet out the travelling expenses from Coimbatore to Pollachi for each and every hearing to attend the proceedings in H.M.O.P.No.70 of 2015

filed by the respondent. In the circumstances, the petitioner has come out with the present Tr.C.M.P. to transfer H.M.O.P.No.70 of 2015 pending on the file of the Sub Court, Pollachi to the file of the Additional Family Court, Coimbatore to be tried alongwith H.M.O.P.No.765 of 2014, pending on its file.

4. Heard the learned counsel for the petitioner and perused the materials available on record. Though notice was served on the respondent and his name is printed in the cause list, there is no representation on behalf of the respondent either in person or through counsel.

5. It is 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]. Further, as per the provisions of the Hindu Marriage Act, place of residence of wife must be taken into account.

6. Having regard to the submissions made by the learned counsel for the petitioner and the decisions of the Hon'ble Apex Court referred to above and residence of the petitioner at Coimbatore, the petition in H.M.O.P.No.70 of 2015 is ordered to be withdrawn from the file of the Sub Court, Pollachi and transferred to the file of the Additional Family Court, Coimbatore, to be tried along with H.M.O.P.No.765 of 2014 filed by the petitioner, in order to avoid multiplicity of proceedings and conflicting judgments being delivered by two different Courts. The learned Subordinate Judge, Pollachi, is directed to transmit all the records pertaining to H.M.O.P.No.70 of 2015 to the file of the Additional Family Court, Coimbatore, within a period of two weeks from the date of receipt of a copy of this order.

7. Accordingly, this Transfer Civil Miscellaneous petition is ordered. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS VI)
//True Copy//

Sub Assistant Registrar

rgr

To

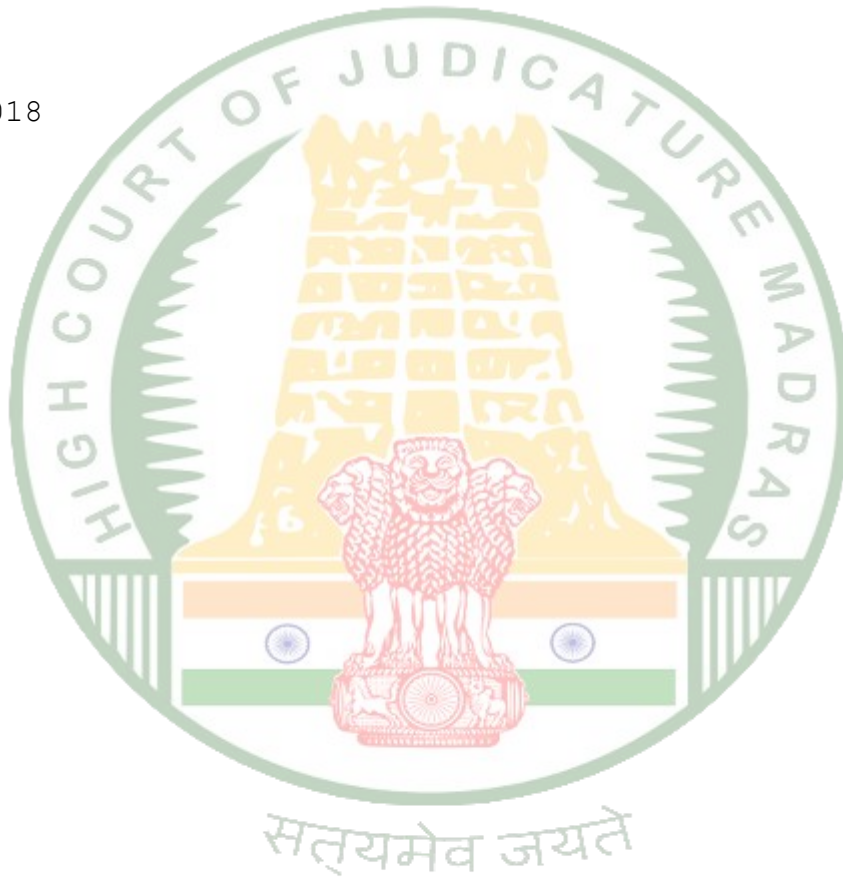
1.The Sub Court, Pollachi

2.The Additional Family Court, Coimbatore.

+1 cc to M/s.J.Franklin Advocate sr 26357

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