

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Tr.C.M.P.Nos.1085 of 2017 and 49 of 2018
and C.M.P.Nos.22354 of 2017 and 1290 of 2018

Tr.C.M.P.No.1085/2017

G.Vijayapriya .. Petitioner

Vs.

G.Ganesh .. Respondent

Tr.C.M.P.No.49/2018

G.Ganesh .. Petitioner

Vs.

G.Vijayapriya .. Respondent

PRAYER in Tr.C.M.P.No.1085/2017: Petition filed under Section 24 of the Civil Procedure Code, to withdraw M.O.P.No.185 of 2017 pending on the file of the Family Court at Puducherry and transfer the same to the file of the Family Court at Salem.

PRAYER in Tr.C.M.P.No.49/2018: Petition filed under Section 24 of the Civil Procedure Code, to withdraw F.C.O.P.No.425 of 2017 pending on the file of the Family Court at Salem and transfer the same to the file of the Family Court, Puducherry to be tried along with M.O.P.No.185 of 2017.

Tr.C.M.P.No.1085 of 2017

For Petitioner : M/s. Karan and Uday

For Respondent : M/s.Y. Kavitha,
for M/s. Giridhar and Sai

Tr.C.M.P.No.49 of 2018

For Petitioner : Mr/s. Y. Kavitha,
for M/s. Giridhar and Sai.

For Respondent : N.A

C O M M O N O R D E R

Tr.C.M.P.No.1085/2017 has been filed by the wife to withdraw M.O.P.No.185 of 2017 pending on the file of the Family Court at Puducherry and transfer the same to the file of the Family Court at Salem.

Tr.C.M.P.No.49/2018 has been filed by the husband to withdraw F.C.O.P.No.425 of 2017 pending on the file of the Family Court at Salem and transfer the same to the file of the Family Court, Puducherry to be tried along with M.O.P.No.185 of 2017.

2.The issues and the parties involved in both the Transfer Civil Miscellaneous Petitions are one and the same and therefore, they are disposed of by this common order.

3.The marriage between the husband and wife was conducted on 07.05.2008 as per Hindu rites and customs. In the wedlock, two children were born. Due to difference of opinion, both the husband and wife are living separately. The wife filed F.C.O.P.No.425 of 2017 on the file of Family Court, Salem, for restitution of conjugal rights against the husband. The husband filed M.O.P.No.185 of 2017 on the file of the Family Court, Puducherry, for divorce against the wife.

4.According to the wife, she is residing in Salem along with aged parents and minor children who are studying in a School at Salem. The distance between Salem and Puducherry is 160 kms and hence, it will be very difficult for her to travel such a long distance leaving behind the minor children. She is not having any independent income and depending on her parents for her day-to-day expenses. In the circumstances, she has come out with Tr.C.M.P.No.1085/2017 to transfer M.O.P.No.185 of 2017 pending on the file of the Family Court at Puducherry to the file of the Family Court at Salem.

5.The learned counsel for the husband submitted that the wife filed Transfer Civil Miscellaneous Petition suppressing the fact that she already filed H.M.O.P.No.30 of 2017 on the file of Sub Court, Chengalpattu for restitution of conjugal rights and subsequently, she withdrew the same. At first, only the husband has initiated the proceedings for restitution of conjugal rights and therefore, prayed for dismissal of Transfer Civil Miscellaneous Petition.

6.Heard the learned counsel for the husband as well as the wife and perused the materials available on record.

7.Considering the above contention of the learned counsel for the husband as well as the wife and the well settled judicial pronouncement of 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], the convenience of the wife must be given preference in the matrimonial proceedings. Further, as per the provisions of the Hindu Marriage Act, place of residence of wife must be taken into account.

8.Accordingly, Tr.C.M.P.No.1085 of 2017 filed by the wife is ordered and Tr.C.M.P.No.49 of 2018 filed by the husband is dismissed. The petition in M.O.P.No.185 of 2017 is ordered to be withdrawn from the file of the Family Court, Puducherry and transferred to the file of the Family Court, Salem. The learned Judge, Family Court, Puducherry is directed to transmit all the records pertaining to M.O.P.No.185 of 2017 to the file of the Family Court, Salem, within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

gsa
To

1.The Judge,
Family Court,
Salem.

2.The Judge,
Family Court, Puducherry.

+ 1 ccs to M/s. Karan and Uday, Advocate Sr.52241
+ 2 cc to M/s. Giridhar & Sai, Sr.51968 & 51969

Tr.C.M.P.Nos.1085 of 2017 and 49 of 2018
and C.M.P.Nos.22354 of 2017 and 1290 of 2018

(CS-VII)
EU(05/09/2018)