

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P. No.1089 of 2017

and C.M.P.No.22395 of 2017

B.Mary Jennifer

... Petitioner

Vs.

J.Sahaya Lenin

... Respondent

Prayer:- Petition has been filed under Section 24 of C.P.C., to withdraw I.D.O.P.No.32 of 2017 pending on the file of the Family Court, Sivagangai and transfer the same to the file of the II Additional Family Court, Chennai and to try along with M.C.No.499 of 2013 pending on its file.

For Petitioner : Mr.J.Saravana Vel

For Respondent : Mr.A.Jotheeswaran

O R D E R

This petition is filed to withdraw I.D.O.P.No.32 of 2017 pending on the file of the Family Court, Sivagangai and transfer the same to the file of the II Additional Family Court, Chennai and to try along with M.C.No.499 of 2013 pending on its file.

2. The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was solemnised on 21.06.2012 as per Christian rites and customs, at John de Britto Church, Kalayarkoil, Sivagangai District. In the wed lock, a male child was born on 09.04.2013. The respondent left the petitioner at her parents house during 5th month of her pregnancy. He did not take back the petitioner to her matrimonial home, even after the birth of the child. Therefore, the petitioner filed M.C.No.499 of 2013 before the I Additional Family Court, Chennai, for interim maintenance for herself and minor child, on 01.10.2013. The respondent appeared before the I Additional Family Court, Chennai on 19.11.2013 and the respondent was directed to appear before the Mediation Centre on 20.01.2014 along with his parents. While so, as the counter blast for the maintenance case in M.C.No.499 of 2013, the respondent filed I.D.O.P.No.42 of 2013 for restitution of conjugal rights, before the District Court, Sivagangai and filed Tr.C.M.P.No.414 of 2013 before the Madurai Bench of the Madras High Court, seeking transfer of M.C.No.499 of 2013 to the file

of the District Court, Sivagangai and to try along with the said I.D.O.P. The said Tr.C.M.P. was dismissed on 07.04.2014. The petitioner filed Tr.C.M.P.No.129 of 2014 for transfer of I.D.O.P.No.42 of 2013 pending on the file of the District Court, Sivagangai to the file of the Family Court, Chennai. This Court by order dated 16.07.2014 allowed the said Tr.C.M.P.No.129 of 2014 and I.D.O.P.No.42 of 2013 was transferred from the District Court, Sivagangai, to the file of the I Additional Family Court, Chennai and renumbered as F.C.O.P.No.3919 of 2014. The petitioner filed counter statement in the said F.C.O.P.No.3919 of 2014 and also filed I.A.No.305 of 2015 for injunction restraining the respondent from alienating and encumbering his property pending disposal of the said O.P. While the petitions were pending, the respondent filed I.A.No.490 of 2017 seeking permission to withdraw F.C.O.P.No.3919 of 2014 and the respondent was permitted to withdraw F.C.O.P.No.3919 of 2014 on condition that the respondent should not alienate or encumber the property. Thereafter, the respondent has filed present I.D.O.P.No.32 of 2017 before the Family Court, Sivagangai, for divorce.

3. According to the petitioner, she is residing at Chennai. The distance between Chennai and Sivagangai is more than 450 kilometers. There is no one to accompany the petitioner to travel such a long distance. The petitioner is having 4 years minor child and even after passing order in M.C.No.499 of 2013 directing the respondent to pay the maintenance to the petitioner and her minor child, the respondent did not pay the maintenance amount. The respondent is residing at Kalayarkoil in Sivagangai. She was informed by the relative that the respondent is now working at Hyderabad. Only to harass the petitioner, the respondent has filed the present petition before the Family Court, Sivagangai. In the circumstances, the petitioner has come out with the present Tr.C.M.P. to transfer I.D.O.P.No.32 of 2017 pending on the file of the Family Court, Sivagangai to the file of the II Additional Family Court, Chennai and to try along with M.C.No.499 of 2013 pending on its file.

4. Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record.

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].

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 also taking note of the earlier

order passed by this Court in Tr.C.M.P.No.129 of 2014 transferring I.D.O.P.No.42 of 2013 from the file of the District Court, Sivagangai to the file of the Family Court, Chennai and subsequently, withdrawal of the said O.P. by the respondent, the petition in I.D.O.P.No.32 of 2017 is ordered to be withdrawn from the file of the Family Court, Sivagangai and transferred to the file of the II Additional Family Court, Chennai and to be tried along with M.C.No.499 of 2013 pending on its file. The learned Judge, Family Court, Sivagangai, is directed to transmit all the records pertaining to I.D.O.P.No.32 of 2017 to the file of the II Additional Family Court, Chennai, 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 IX)

//True Copy//

Sub Assistant Registrar

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To

1.The Family Judge, Sivagangai.

2.II Additional Judge, Family Court, Chennai.

+1 cc to Mr.J.Saravanavel Advocate sr 24196

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