

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Tr.C.M.P.No.131 of 2017
and C.M.P.No.2251 of 2017

Jeevitha

.. Petitioner

Vs.

Karthick

.. Respondent

PRAYER: Petition filed under Section 24 of the Civil Procedure Code, to withdraw F.C.O.P.No.445 of 2016 pending on the file of the Family Court, Erode and transfer the same to the file of the Sub Court, Gobichettipalayam to be tried along with H.M.O.P.No.10 of 2017.

For Petitioner : Mr.S.Parthasarthy

For Respondent : No Appearance

O R D E R

This Transfer Civil Miscellaneous Petition has been filed to withdraw F.C.O.P.No.445 of 2016 pending on the file of the Family Court, Erode and transfer the same to the file of the Sub Court, Gobichettipalayam to be tried along with H.M.O.P.No.10 of 2017.

2.The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was conducted on 08.02.2012 at Sangameshwarar Temple, Kooduthurai, Bhavani, Erode District. After marriage, both the petitioner and respondent were living together in the matrimonial home at Siriyampalayam Post, Erode District. In the wedlock, a male child was born. The respondent and his parents tortured the petitioner and thrown her out of the matrimonial home on 15.10.2016. The petitioner is residing at Gobichettipalayam along with her parents. The petitioner filed H.M.O.P.No.10 of 2017 on the file of the Sub Court, Gobichettipalayam for divorce. The respondent filed F.C.O.P.No.445 of 2016 before the Family Court, Erode for restitution of conjugal rights.

3. According to the petitioner, she is residing in Gobichettipalayam along with her aged parents and minor child. The distance between Gobichettipalayam and Erode is 45 kms. It is very difficult for her to travel such a long distance along with minor child to attend each and every hearing alone, as there is no one to accompany her, except aged parents. In the circumstances, the petitioner has filed the present Transfer Civil Miscellaneous Petition to transfer F.C.O.P.No.445 of 2016 pending on the file of the Family Court, Erode to the file of the Sub Court, Gobichettipalayam to be tried along with H.M.O.P.No.10 of 2017 in order to avoid conflicting decisions.

4. The learned counsel for the petitioner submitted that the petitioner is not having any independent income to maintain her day-to-day expenses, including traveling expenses.

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

6. Considering the above contention of the learned counsel for the petitioner and well settled judicial pronouncement of the Hon'ble Apex 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.

7. Accordingly, the Transfer Civil Miscellaneous Petition is ordered. The petition in F.C.O.P.No.445 of 2016 is ordered to be withdrawn from the file of the Family Court, Erode and transferred to the file of the Sub Court, Gobichettipalayam to be tried along with H.M.O.P.No.10 of 2017, in the interest of justice, in order to avoid multiplicity of proceedings and conflicting judgments being delivered by two different Courts. The learned Family Court Judge, Erode, is directed to transmit all the records pertaining to F.C.O.P.No.445 of 2016 to the file of the Sub Court, Gobichettipalayam, within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

gsa

To

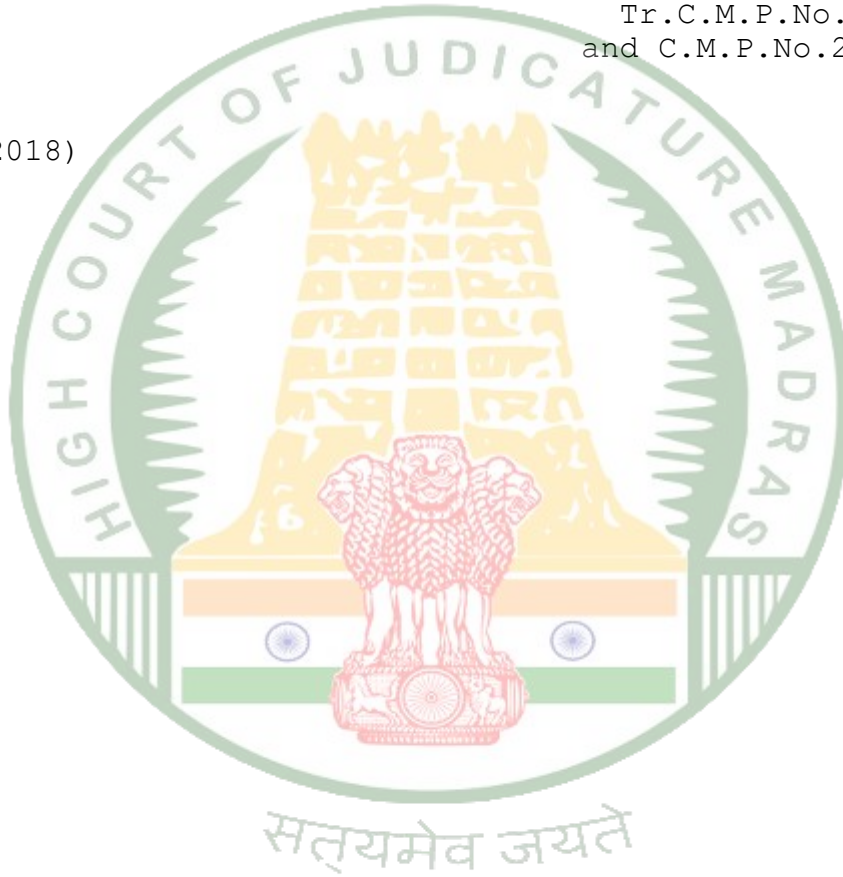
1.The Family Court Judge,
Erode.

2.The Subordinate Judge,
Gobichettipalayam.

+1cc to Mr.S.PARTHASARATHY, Advocate, S.R.No. 31052

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TR(12/06/2018)



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