

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P. No.212 of 2017
and C.M.P.No.3880 of 2017

Vijayalakshmi @ Divya

... Petitioner

Vs.

Subramani @ Palani

... Respondent

Prayer:- Petition is filed under Section 24 of C.P.C., to withdraw H.M.O.P.No.20 of 2017 pending on the file of the Sub Court, Attur, Salem District and transfer the same to the file of the Sub Court, Tambaram, to try along with H.M.O.P.No.454 of 2016 pending on its file.

For Petitioner : Mr.C.R.Malarvanan

For Respondent : No appearance

O R D E R

This petition is filed to withdraw H.M.O.P.No.20 of 2017 pending on the file of the Sub Court, Attur, Salem District and transfer the same to the file of the Sub Court, Tambaram, to try along with H.M.O.P.No.454 of 2016 pending on its file.

2.The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was conducted on 28.02.2012 as per Hindu rites and customs. After marriage, both the petitioner and respondent were living together in the matrimonial home at Mullaivadi, Attur. Due to the torture by the respondent demanding dowry, the petitioner was forced to leave the matrimonial home during the month of September 2015 and she filed H.M.O.P.No.454 of 2016 for divorce against the respondent on the file of the Sub Court, Tambaram. While so, the respondent filed H.M.O.P.No.20 of 2017 for restitution of conjugal rights against the petitioner, on the file of the Sub Court, Attur, Salem District.

3.According to the petitioner, her father died in the year 2012 and she is residing along with her aged mother at Ullagaram, Chennai. The distance between Chennai and Attur is more than 290 kilometers and hence, it will be very difficult for her to travel such a long distance to attend the Court proceedings at Attur. Further, she is not having any independent income and she is depending on her aged mother for

her day-to-day expenses including travelling expenses. In the circumstances, the petitioner has come out with the present Tr.C.M.P. to transfer H.M.O.P.No.20 of 2017 pending on the file of the Sub Court, Attur, Salem District, to the file of the Sub Court, Tambaram, to try along with H.M.O.P.No.454 of 2016 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 him either in person or through counsel.

5.Considering the above contention of the learned counsel for the petitioner and 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.

6.Accordingly, the Transfer Civil Miscellaneous Petition is ordered. The petition in H.M.O.P.No.20 of 2017 is ordered to be withdrawn from the file of the Sub Court, Attur, Salem District and transferred to the file of the Sub Court, Tambaram, to be tried along with H.M.O.P.No.454 of 2016 filed by the petitioner in order to avoid multiplicity of proceedings and conflicting judgments being delivered by two different Courts. The learned Subordinate Judge, Attur, Salem District, is directed to transmit all the records pertaining to H.M.O.P.No.20 of 2017 to the file of the Sub Court, Tambaram, 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.

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Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge, Attur, Salem District.

2.The Subordinate Judge, Tambaram.

+ 1 cc to MR. N. Mohideen Basha, Advocate SR.41221

Tr.C.M.P. No.212 of 2017
and C.M.P.No.3880 of 2017

(CS-DR)
EU(18/07/2018)



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