

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P. No.304 of 2017

and C.M.P.No.5777 of 2017

I.Devi ... Petitioner/Respondent

Vs.

R.Naveen Kumar ... Respondent/Petitioner

Prayer:- Petition has been filed under Section 24 of C.P.C., to withdraw H.M.O.P.No.208 of 2017 pending on the file of the III Additional Family Court, Chennai and transfer the same to the file of the II Additional Subordinate Court, Nagercoil.

For Petitioner : Mr.S.Ajikumar
For Respondent : Mr.M.Senthamizh Selvan

O R D E R

This petition is filed to withdraw H.M.O.P.No.208 of 2017 pending on the file of the III Additional Family Court, Chennai and transfer the same to the file of the II Additional Subordinate Court, Nagercoil.

2.The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was conducted on 18.06.2015 as per Hindu rites and customs. After marriage, both the petitioner and respondent were living in the matrimonial home at Chennai. The respondent and her in-laws started ill-treating the petitioner and they have also demanded dowry and thrown her out from the matrimonial home. Therefore, she went to her parental home at Nagercoil. While so, to her sudden shock and surprise, the respondent sent a notice dated 29.08.2016 calling upon the petitioner to give consent for divorce. On receiving notice, the petitioner along with her parents tried to negotiate with the respondent with the help of their family members and also sent reply notice dated 01.12.2016 to the respondent. While so, the petitioner received summons from the III Additional Family Court, Chennai in H.M.O.P.No.208 of 2017, which was filed by the respondent, for divorce against

the petitioner. The petitioner has also filed H.M.O.P.No.24 of 2017 before the II Additional Subordinate Court, Nagercoil, for restitution of conjugal rights against the respondent and the same is pending.

3. According to the petitioner, she is residing at Nagercoil in Kanyakumari District along with her aged parents. The distance between Nagercoil and Chennai is nearly 730 kilometers and hence, it is difficult for her to attend the Court proceedings in III Additional Family Court, Chennai, wherein presence of spouse is mandatory for each and every hearing. She has no one to accompany her to travel such a long distance. Further, the petitioner has no independent income and hence, it is difficult for her to meet out the travelling expenses. In the circumstances, the petitioner has come out with the present Tr.C.M.P. to transfer H.M.O.P.No.208 of 2017 from the file of the III Additional Family Court, Chennai, to the file of the II Additional Subordinate Court, Nagercoil.

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]. 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 Nagercoil, the petition in H.M.O.P.No.208 of 2017 is ordered to be withdrawn from the file of the III Additional Family Court, Chennai and transferred to the file of the II Additional Subordinate Court, Nagercoil, to be tried along with H.M.O.P.No.24 of 2017, which is filed by the petitioner, in order to avoid multiplicity of proceedings and conflicting judgments being delivered by two different Courts. The learned III Additional Judge, Family Court, Chennai, is directed to transmit all the records pertaining to H.M.O.P.No.208 of 2017 to the file of the II Additional Subordinate Court, Nagercoil, 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-V)

//True Copy//

Sub Assistant Registrar

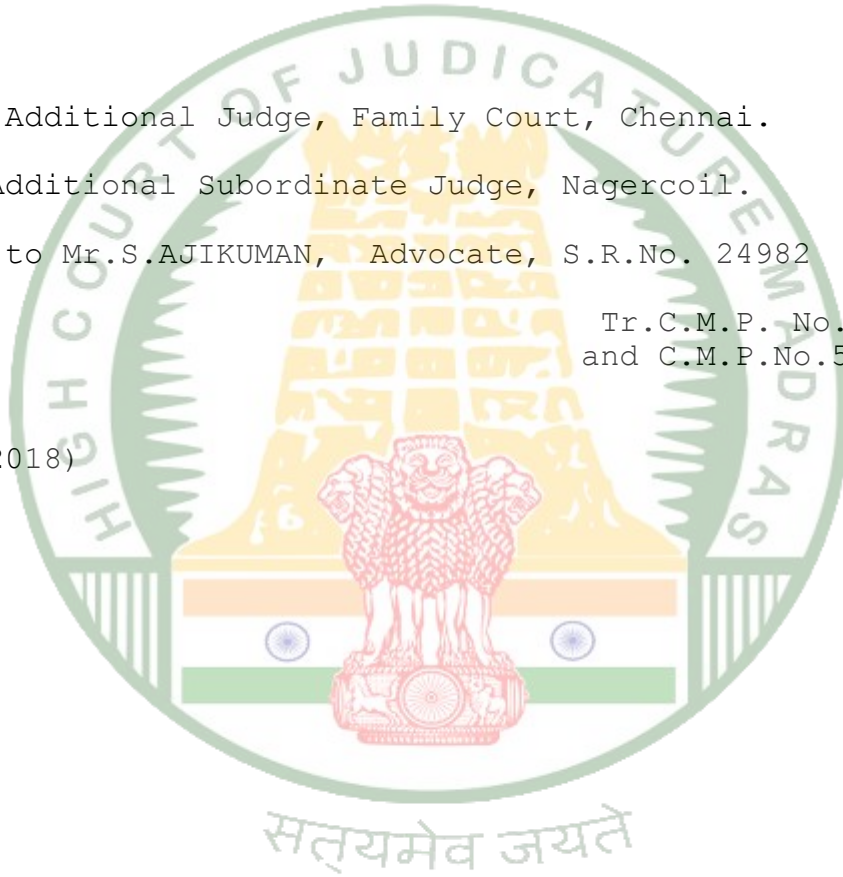
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To

- 1.The III Additional Judge, Family Court, Chennai.
- 2.The II Additional Subordinate Judge, Nagercoil.

+1cc to Mr.S.AJIKUMAN, Advocate, S.R.No. 24982

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VG II (CO)
TR(24/04/2018)



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