

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P. Nos.438 and 918 of 2017

and C.M.P.Nos.8989 and 18550 of 2017

G.Padmavathi

... Petitioner in both
Tr.C.M.Ps.

Vs.

A.Kesavan

... Respondent in
both Tr.C.M.Ps.

COMMON PRAYER:- Petitions have been filed under Section 24 of C.P.C., to withdraw H.M.O.P.No.215 of 2017 and H.M.O.P.No.1301 of 2017 pending on the file of the Principal Family Court, Coimbatore and transfer the same to the file of the Subordinate Court, Kovilpatti.

For Petitioner : Mr.B.Thirumalai

For Respondent : Mr.T.Elumalai

C O M M O N O R D E R

These petitions are filed to withdraw H.M.O.P.No.215 of 2017 and G.W.O.P.No.1301 of 2017 pending on the file of the Principal Family Court, Coimbatore and transfer the same to the file of the Subordinate Court, Kovilpatti.

2.The parties and the issues 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 petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was conducted on 26.10.2010 at Sri Jegannatha Perumal Thiru Kovil, Pappanaickenpalayam, Coimbatore as per Hindu Rites and Customs. In the wedlock, a female child was born on 25.06.2011. Due to misunderstanding, the petitioner and respondent are living separately and minor child is with the petitioner. The petitioner and minor child are living at Kovilpatti along with her parents. The petitioner filed H.M.O.P.No.227 of 2016 on the file of the Subordinate Court, Kovilpatti for restitution of conjugal rights. On receiving summons from the Subordinate Court, Kovilpatti, the respondent filed H.M.O.P.No.215 of 2017 before the Principal Family Court, Coimbatore against the petitioner for dissolution of marriage, making false and frivolous allegations. The respondent also filed G.W.O.P.No.1301 of 2017 on the file of Principal Family Court, Coimbatore for custody of child.

4. According to the petitioner, she is residing at Kovilpatti and the distance between Kovilpatti and Coimbatore is more than 400 kms. It will be very difficult for her to travel such a long distance along with the minor child. Further there is likelihood of threat from the respondent and his relatives if she goes to Coimbatore to attend the Court proceedings. The minor child is studying in the School at Kovilpatti and prayed for transferring H.M.O.P.No.215 of 2017 and G.W.O.P.No.1301 of 2017 both pending on the file of the Principal Family Court, Coimbatore to Subordinate Court, Kovilpatti to be tried along with H.M.O.P.No.227 of 2016.

5. The respondent filed counter affidavit and made various allegations against the petitioner and contended that petitioner's parents have beaten him on one occasion and if he goes to Kovilpatti his life will not be safe. The learned counsel for the respondent further submitted that the respondent is working in Punjab National Bank, Tirupattur Branch, Sivaganga and it will be convenient for him to appear before the Court at Tirupattur.

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

7. Both the petitioner and respondent are making allegations against each other that their life is not safe if they go to the place where other party is residing. The petitioner contends that it is very difficult for her to attend the Court proceedings at Principal Family Court, Coimbatore in H.M.O.P.No.215 of 2017 and G.W.O.P.No.1301 of 2017 along with minor child. The minor child is studying at Kovilpatti.

8. 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, the place of the residence of the wife must be taken into account. The interest of the minor is the paramount consideration while considering the petition for custody of minor.

9. 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, the residence of the petitioner is at Kovilpatti and considering the rival contentions that their lives are not safe if they go to Kovilpatti or Coimbatore and taking into consideration the interest of the minor child, all the three O.Ps. Viz., H.M.O.P.No.227 of 2016 filed by the petitioner, H.M.O.P.No.215 of 2017 filed by the respondent and G.W.O.P.No.1301 of 2017 filed by the respondent

are respectively ordered to be withdrawn from the file of the Subordinate Court, Kovilpatti, Principal Family Court, Coimbatore and Principal Family Court, Coimbatore and transferred to the file of the Principal District Court, Thoothukudi to be heard and tried jointly. The learned Subordinate Judge, Kovilpatti and learned Principal Family Court Judge, Coimbatore are respectively directed to transmit all the records pertaining to H.M.O.P.Nos.227 of 2016, 215 of 2017 and G.W.O.P.No.1301 of 2017 to the file of the Principal District Court, Thoothukudi, within a period of two weeks from the date of receipt of a copy of this order. The learned Principal District Judge, Thoothukudi is directed to dispose of the cases as expeditiously as possible, in any event, not later than six months thereafter.

10. Accordingly, these Transfer Civil Miscellaneous Petitions are ordered. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

gsa
To

- 1.The Principal District Judge,
Thoothukudi
- 2.The Subordinate Judge,
Coimbatore.
- 3.The Principal Family Court Judge,
Coimbatore.
- 4.The Principal Family Court, Thoothukudi
- 5.The Subordinate Judge, Kovilpatti

+2cc to M/s.B.Thirumalai, Advocate Sr.No.27537, 27538
+1cc to M/s.T.Elumalai, Advocate Sr.No.27648

MR(CO)
sm:8.5.2018

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