

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P. No.46 of 2017

and C.M.P.No.939 of 2017

P.Prabha

... Petitioner

Vs.

M.Gnanasekar

... Respondent

(Cause title amended vide order of Court dated 21.04.2017 made in C.M.P.No.2728 of 2017 in Tr.C.M.P.No.46/2017)

Prayer:- Petition is filed under Section 24 of C.P.C., to withdraw H.M.O.P.No.448 of 2014 pending on the file of Sub Court, Tambaram and transfer the same to the file of Sub Court, Valliyoor, to be tried along with H.M.O.P.No.113 of 2016 pending on its file.

For Petitioner : Mr.M.A.R.Pragash

For Respondent : No Appearance

O R D E R

This petition is filed to withdraw H.M.O.P.No.448 of 2014 pending on the file of Sub Court, Tambaram and transfer the same to the file of Sub Court, Valliyoor, to be tried along with H.M.O.P.No.113 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 28.05.2007 as per Hindu rites and customs. In the wedlock, two children were born. Due to difference of opinion, both the petitioner and respondent are living separately. While so, the respondent filed H.M.O.P.No.448 of 2014 on the file of Sub Court, Tambaram for divorce. The petitioner filed H.M.O.P.No.113 of 2016 on the file of the Sub Court, Valliyoor for restitution of conjugal rights.

3. According to the petitioner, she is residing at Tirunelveli along with her children. She is not having any independent income to maintain herself and the minor children. The distance between Tirunelveli and Tambaram is more than 590 kilometers and hence, being a lady, it will be very difficult for her to travel such a long distance to attend each and every hearings without assistance. In the circumstances, she has come out with the present Transfer Civil Miscellaneous Petition to transfer H.M.O.P.No.448 of 2014 pending on the file of Sub Court, Tambaram to the file of Sub Court at Valliyoor, Tirunelveli District, to be tried along with H.M.O.P.No.113 of 2016, in order to avoid conflicting decisions being delivered by two different Courts.

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

5. Considering the above contention of the learned counsel for the petitioner and the 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.448 of 2014 is ordered to be withdrawn from the file of Sub Court, Tambaram and transferred to the file of Sub Court at Valliyoor, Tirunelveli District, to be tried along with H.M.O.P.No.113 of 2016, in order to avoid multiplicity of proceedings and conflicting decisions being rendered by two different Courts. The learned Subordinate Judge,

Tambaram is directed to transmit all the records pertaining to H.M.O.P.No.448 of 2014 to the file of the Sub Court at Valliyoor, 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(CCC)

//True Copy//

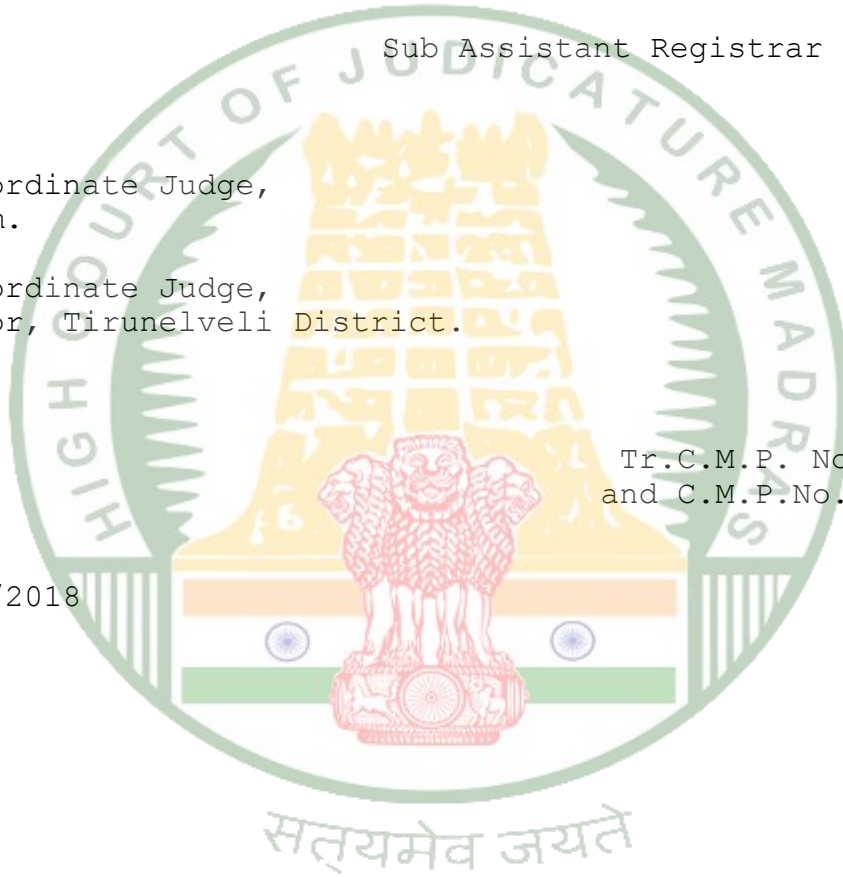
Sub Assistant Registrar

To

- 1.The Subordinate Judge,
Tambaram.
- 2.The Subordinate Judge,
Valliyoor, Tirunelveli District.

Tr.C.M.P. No.46 of 2017
and C.M.P.No.939 of 2017

srg 10/08/2018



WEB COPY