

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.520 of 2017

and C.M.P.No.10724 of 2017

Padma Priya

... Petitioner

Vs.

Rajeshwaran

... Respondent

Prayer:- Petition has been filed under Section 24 of C.P.C., to withdraw H.M.O.P.No.9 of 2017 pending on the file of the Subordinate Court, Palani and transfer the same to the file of the II Additional Subordinate Court, Coimbatore.

For Petitioner : Mr.V.Kannadasan

For Respondent : No Appearance

O R D E R

This petition is filed to withdraw H.M.O.P.No.9 of 2017 pending on the file of the Subordinate Court, Palani and transfer the same to the file of the II Additional Subordinate Court, Coimbatore.

2.The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was conducted on 07.06.2012 at Palani Thiru Avinankudi Temple, Palani as per Hindu rites and customs. After marriage, the petitioner and respondent were living together in the matrimonial home at Palani. A male child was born on 14.06.2013 in the wedlock. On 27.08.2013, the respondent brutally assaulted the petitioner when she asked to give her mobile phone to speak with her parents. Therefore, on 28.08.2013, the mother of the respondent sent the petitioner to her mother's home along with child. After that, due to health issues of the respondent, the petitioner agreed to join with him and went to matrimonial home at Palani during the month of February 2014. Unable to bear the cruelties and the torture given by the respondent, the petitioner left the matrimonial home on 10.03.2014. Thereafter, the steps taken by the parents of the petitioner and relatives went in vain and

hence petitioner filed H.M.O.P.No.163 of 2016 on the file of the II Additional Subordinate Court, Coimbatore against the respondent for divorce, on the ground of cruelty and the same is pending. While so, the respondent filed a petition in H.M.O.P.No.9 of 2017 for restitution of conjugal rights on the file of the Subordinate Court, Palani, Dindigul District.

3. According to the petitioner, she is a poor lady residing at Coimbatore. The distance between Coimbatore and Palani is more than 100 kms and it is very difficult for her to travel from Coimbatore to Palani along with her minor child for each and every hearing in H.M.O.P.No.9 of 2017. In the circumstances, she has filed the present Transfer Civil Miscellaneous Petition to transfer H.M.O.P.No.9 of 2017 pending on the file of the Subordinate Court, Palani, Dindigul District to the II Additional Subordinate Court, Coimbatore to be tried along with H.M.O.P.No.163 of 2016 filed by the petitioner.

4. 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.

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, the 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 the residence of the petitioner at Coimbatore, the petition in H.M.O.P.No.9 of 2017 is ordered to be withdrawn from the file of the Subordinate Court, Palani, Dindigul District and transferred to the file of the II Additional Subordinate Court, Coimbatore to be tried along with H.M.O.P.No.163 of 2016, in the interest of justice, in order to avoid multiplicity of proceedings and conflicting judgments being delivered by two different Courts. The learned Subordinate Judge, Palani, Dindigul District is directed to transmit all the records pertaining to H.M.O.P.No.9 of 2017 to the file of the II Additional Subordinate Judge, Coimbatore, 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/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

gsa

To

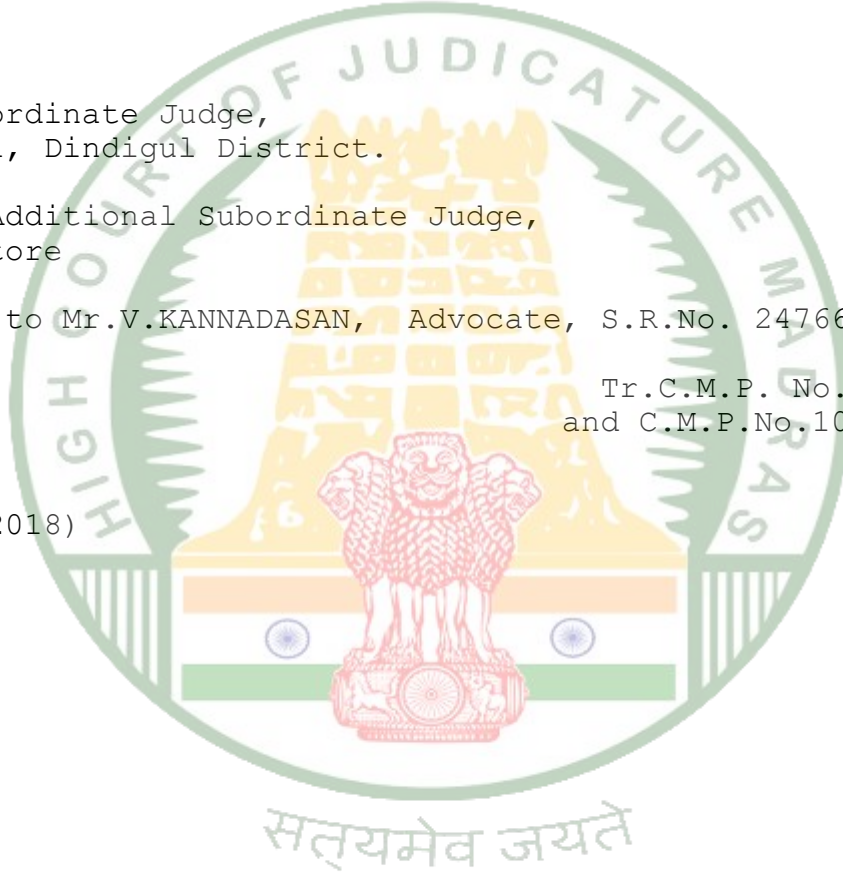
1.The Subordinate Judge,
Palani, Dindigul District.

2.The II Additional Subordinate Judge,
Coimbatore

+2cc to Mr.V.KANNADASAN, Advocate, S.R.No. 24766

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TR(20/04/2018)



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