

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P. No.555 of 2017

and C.M.P.No.11438 of 2017

E.Sukanya

... Petitioner

Vs.

S.Chenniappan @ Muthukrishnan

... Respondent

Prayer:- Petition has been filed under Section 24 of C.P.C., to withdraw F.C.O.P.No.110 of 2017 pending on the file of the Family Court, Erode and transfer the same to the file of the Subordinate Court, Dharapuram to be tried along with H.M.O.P.No.78 of 2017.

For Petitioner : M/s.P.Kaviri Nadan
for Mr.N.Manokaran

For Respondent : No Appearance

O R D E R

This petition is filed to withdraw F.C.O.P.No.110 of 2017 pending on the file of the Family Court, Erode and transfer the same to the file of the Subordinate Court, Dharapuram to be tried along with H.M.O.P.No.78 of 2017.

2.The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was conducted on 29.08.2014 at Arulmigu Chennimalai Andavar Temple as per Hindu Rites and Customs. The respondent tortured the petitioner by demanding dowry and hence the petitioner lodged a complaint before Superintendent of Police, Tirupur on 29.08.2016 and filed D.V.A.No.6 of 2016 before the Judicial Magistrate, Kangayam. On coming to know about filing of the D.V.A.No.6 of 2016, the respondent filed F.C.O.P.No.110 of 2017 for restitution of conjugal rights on the file of the Family Court, Erode. The petitioner also filed H.M.O.P.No.78 of 2017 on the file of the Subordinate Court, Dharapuram for divorce on the ground of

desertion and cruelty. In the circumstances, the petitioner has come out with the present Transfer Civil Miscellaneous Petition to withdraw F.C.O.P.No.110 of 2017 pending on the file of the Family Court, Erode and transfer the same to the file of the Subordinate Court, Dharapuram, to be tried along with H.M.O.P.No.78 of 2017.

3. According to the petitioner, she is residing at Vellakovil along with her parents. She is not having any independent income. The distance between Vellakovil and Erode is more than 100 kms and it is very difficult for her to attend each and every hearing before the Family Court, Erode. The issues in both F.C.O.P.No.110 of 2017 and H.M.O.P.No.78 of 2017 are one and the same and prayed for joint trial before the Subordinate Court at Dharapuram.

4. Heard 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 the 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, the petition in F.C.O.P.No.110 of 2017 is ordered to be withdrawn from the file of the Family Court, Erode and transferred to the file of Subordinate Court, Dharapuram to be tried along with H.M.O.P.No.78 of 2017 in the interest of justice, in order to avoid multiplicity of proceedings and conflicting judgments being delivered by two different Courts. The learned Family Court Judge, Erode, is directed to transmit all the records pertaining to F.C.O.P.No.110 of 2017 to the file of the Subordinate Court, Dharapuram, 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

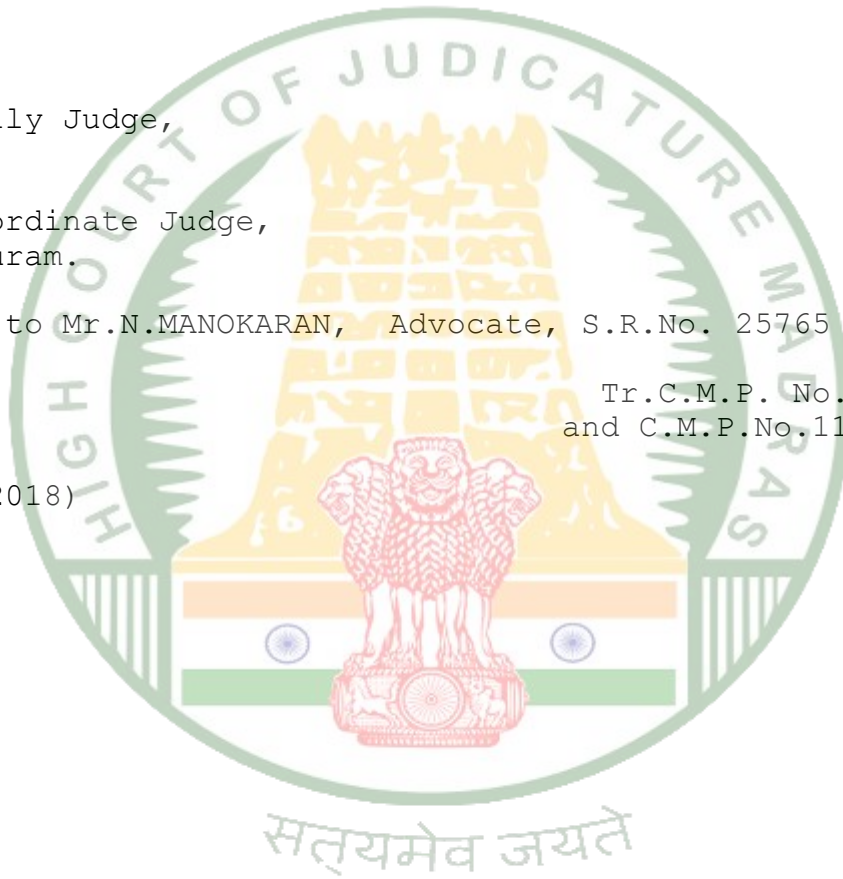
1.The Family Judge,
Erode.

2.The Subordinate Judge,
Dharapuram.

+1cc to Mr.N.MANOKARAN, Advocate, S.R.No. 25765

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TR(04/05/2018)



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