

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P. Nos.756 and 757 of 2017

and C.M.P.Nos.15412 and 15413 of 2017

B.Prabha (as Prabhavathy)

... Petitioner in
both Tr.CMPs.

Vs.

Pugazhendy

... Respondent in
both Tr.CMPs.

Prayer in Tr.C.M.P.No.756 of 2017:- Petition has been filed under Section 24 of C.P.C., to withdraw G.O.P.No.10 of 2017 on the file of the Family Court, Pondicherry and transfer the same to the file of the Subordinate Court, Nagapattinam and to be tried along with H.M.O.P.No.174 of 2017 pending on its file.

Prayer in Tr.C.M.P.No.757 of 2017:- Petition has been filed under Section 24 of C.P.C., to withdraw M.O.P.No.300 of 2017 on the file of the Family Court, Pondicherry and transfer the same to the file of the Subordinate Court, Nagapattinam and to be tried along with H.M.O.P.No.174 of 2017 pending on its file.

In both Tr.CMPs.

For Petitioner : M/S.A.B.Reehana Begam for
Mrs.P.Veena Suresh

For Respondent : No appearance

C O M M O N O R D E R

The Transfer Civil Miscellaneous Petitions are filed to withdraw G.O.P.No.10 of 2017 and M.O.P.No.300 of 2017 from the file of the Family Court, Pondicherry and transfer the same to the file of the Subordinate Court, Nagapattinam and to be tried along with H.M.O.P.No.174 of 2017 pending on its file.

2.In both the Transfer Civil Miscellaneous Petitions, the issues and the parties are one and the same and hence, 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 29.10.2001 as per Hindu rites and customs at Subalakshmi Thirumana Mandapam, Muthialpet, Puducherry. In the wed lock, two female children viz., Kamaliga and Harshika were born on 02.06.2003 and 28.02.2007 respectively. The respondent

was ill-treating the petitioner and was not taking care of the children. Due to difference of opinion between them, the petitioner was forced to leave the matrimonial home along with her two minor daughters. At present, the petitioner is residing with her parents in Nagapattinam along with her minor daughters. The petitioner filed H.M.O.P.No.174 of 2017 on the file of the Subordinate Court, Nagapattinam, for dissolution of marriage on the ground of cruelty. The respondent has filed M.O.P.No.300 of 2017 for restitution of conjugal rights and G.O.P.No.10 of 2017 for custody of the minor daughters, on the file of the Family Court, Puducherry.

4. According to the petitioner, the distance between Nagapattinam and Puducherry is more than 150 kilometers and hence, it is very difficult for her to go to Puducherry to attend both the proceedings in M.O.P.No.300 of 2017 and G.O.P.No.10 of 2017. Her two minor daughters are aged about 14 and 10 years respectively and their education and mental health are also affected due to her frequent travel from Nagapattinam to Puducherry. Further, in her absence, it is difficult for the petitioner to leave her minor daughters with her aged parents. Both the M.O.P. and G.O.P. are pending before the Family Court, Puducherry, wherein the presence of spouse is mandatory for each and every hearing. In the circumstances, the petitioner has come out with the present Tr.C.M.Ps. to transfer G.O.P.No.10 of 2017 and M.O.P.No.300 of 2017 from the file of the Family Court, Puducherry, to the file of the Subordinate Court, Nagapattinam and to try along with H.M.O.P.No.174 of 2017 pending on its file.

5. Heard the learned counsel for the petitioner and perused the materials available on record. Though notice was served on the respondent and his name is printed in the cause list, there is no representation on behalf of the respondent either in person or through counsel.

6. The contention of the learned counsel for the petitioner that the petitioner finds it difficult to travel 150 kilometers from Nagapattinam to Puducherry to attend the cases in G.O.P.No.10 of 2017 and M.O.P.No.300 of 2017 for each and every hearing, which will affect both the education and mental health of her minor daughters, has considerable force.

7. The interest of the minor is a paramount consideration while considering the petition for custody of minor. In view of the fact that the minor daughters are residing at Nagapattinam and they are school going children, it will be in the interest of minors, G.O.P.No.10 of 2017 is ordered to be withdrawn from the file of the Family Court, Puducherry and transferred to the file of the Principal District Court, Nagapattinam. Similarly, taking into consideration that 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] and to avoid multiplicity of proceedings and conflicting judgments being delivered by two different Courts, M.O.P.No.300 of 2017 is ordered to be withdrawn from the file of the Family Court, Puducherry and transferred to the file of the Subordinate Court, Nagapattinam and to be tried along with H.M.O.P.No.174 of 2017 pending on its file. The learned Judge, Family Court, Puducherry, is directed to transmit all the records pertaining to G.O.P.No.10 of 2017 to the file of the Principal District Court, Nagapattinam and transmit all the records pertaining to M.O.P.No.300 of 2017 to the file of the Subordinate Court, Nagapattinam, within a period of two weeks from the date of receipt of a copy of this order.

8. Accordingly, both the Transfer Civil Miscellaneous Petitions are ordered. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Judge, Nagapattinam.

2.The Principal District Judge, Nagapattinam.

3.The Judge, Family Court, Puducherry.

+2cc to Mr.P.Veena Suresh, Advocate Sr.No.24464, 24465

SSI(CO)

sm:23.4.2018

Tr.C.M.P. Nos.756 and 757 of 2017
and C.M.P.Nos.15412 and 15413 of 2017

WEB COPY