

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P. No.929 of 2017

and C.M.P.No.18723 of 2017

B.Vasuki Devi

... Petitioner

Vs.

P.Hariharavel

.... Respondent

Prayer:- Petition has been filed under Section 24 of C.P.C., to withdraw the suit in O.P.No.2846 of 2017 pending on the file of the II Additional Family Court, Chennai and transfer the same to the file of the Subordinate Court, Perambalur.

For Petitioner : Mr.R.Gokulakrishnan

For Respondent : Mr.K.P.Sathish Kumar

O R D E R

This petition is filed to withdraw the suit in O.P.No.2846 of 2017 pending on the file of the II Additional Family Court, Chennai and transfer the same to the file of the Subordinate Court, Perambalur.

2.The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was conducted on 11.06.2015 at Muthumariamman Alayam, No.4, Narayanappa Street, Mannadi, Chennai 600 001 as per Hindu Rites and Customs. After the marriage, both the petitioner and respondent were living together in Philadelphia at USA where the respondent works in Software Industry. Due to torture by the respondent, the petitioner left the matrimonial home. Now the petitioner is residing in Perambalur. The respondent filed O.P.No.2846 of 2017 on the file of the II Additional Family Court, Chennai for divorce against the petitioner on the ground of cruelty.

3. According to the petitioner, she is residing in Perambalur. She had lost her father and her mother is an illiterate lady. The distance between Perambalur and Chennai is more than 300 kms. Being a lady, it is very difficult for the petitioner to travel such a long distance alone. In the circumstances, she has filed the present Transfer Civil Miscellaneous Petition to transfer O.P.No.2846 of 2017 from the file of II Additional Family Court, Chennai to the file of the Subordinate Court, Perambalur.

4. The learned counsel for the respondent submitted that the respondent is residing in Philadelphia at USA and all the witnesses are residing in USA and few witnesses are in Chennai. Hence, it will be very convenient for the respondent and all the witnesses to appear before the Court at Chennai and relied on the judgment of Hon'ble Apex Court made in Transfer Petition (Civil) No.1912 of 2014 and submitted that convenience of both the parties should be given preference while considering the issue.

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

6. 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.

7. According to the petitioner, she is residing at Perambalur which is 300 kms away from Chennai. Admittedly, the respondent is not residing in Chennai and he is in USA. Hence, it will be more convenient for both the parties to appear before Subordinate Court, Perambalur by engaging an Advocate. As the respondent is not residing at Chennai, it will not be difficult for the respondent to appear before the Subordinate Court, Perambalur during Trial. The judgment relied on by the learned counsel for the respondent is not applicable to the facts of the present case. On the other hand, the decisions 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] are applicable. The respondent will not be appearing before the II Additional Family Court, Chennai for each and every hearing as he is residing at U.S.A.

8.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 is at Perambalur, the petition in O.P.No.2846 of 2017 is ordered to be withdrawn from the file of the II Additional Family Court, Chennai and transferred to the file of the Subordinate Court, Perambalur. The learned II Additional Family Court Judge, Chennai, is directed to transmit all the records pertaining to O.P.No.2846 of 2017 to the file of the Subordinate Court, Perambalur, within a period of two weeks from the date of receipt of a copy of this order.

9.Accordingly, this Transfer Civil Miscellaneous petition is ordered. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gsa
To

1.The II Additional Family Court Judge,
Chennai

2.The Subordinate Judge,
Perambalur.

+1cc to Mr.Mr.R.Gokulakrishnan, Advocate, S.R.No.27864

+1cc to M/S.Bobby Poertia, Advocate, S.R.No.27913

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