

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P. No.772 of 2017

and C.M.P.No.15676 of 2017

D.Kalaiselvi

... Petitioner/Respondent

Vs.

P.Premkumar

... Respondent/Petitioner

Prayer:- Petition has been filed under Section 24 of C.P.C., to withdraw F.C.O.P.No.296 of 2016 pending on the file of the Family Court, Salem District and transfer the same to the file of the Principal Family Court, Coimbatore to be tried along with H.M.O.P.No.537 of 2017 and M.C.No.75 of 2017 on the file of the Principal Family Court, Coimbatore District.

For Petitioner : Mr.V.Chinnasamy

For Respondent : No Appearance

O R D E R

This petition is filed to withdraw F.C.O.P.No.296 of 2016 pending on the file of the Family Court, Salem and transfer the same to the file of the Principal Family Court, Coimbatore to be tried along with H.M.O.P.No.537 of 2017 and M.C.No.75 of 2017 on the file of the Principal Family Court, Coimbatore.

2.The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was conducted on 26.05.2014 at Arulmighu Kurunthamalai Kulanthai Valathasamy Thirukoil, Karamadai, Coimbatore District. After the marriage, both the petitioner and respondent were living in the petitioner's house. In the wedlock a male child by name Rithikan was born. Due to wordy quarrel, the respondent left the petitioner and is residing with his parents in Salem District. On 18.08.2015, when the petitioner went to the respondent's house, she was forcefully sent out of the matrimonial home. At present, she is residing with her minor child in her parents home in Coimbatore District. While so, the respondent filed F.C.O.P.No.296 of 2016 on the file of the Family Court, Salem for divorce. The petitioner filed H.M.O.P.No.537 of 2017 for restitution of conjugal rights before the Principal Family Court, Coimbatore District and also filed a petition under Section 125 of Cr.P.C, claiming maintenance in M.C.No.75 of 2017

before the Family Court, Coimbatore.

3. According to the petitioner, it is very difficult for her to travel from Coimbatore to Salem for each and every hearing to attend the Court proceedings in F.C.O.P.No.296 of 2016. It takes more than 5 hrs to reach the Family Court at Salem and it is very difficult for her to travel with her minor child all the way. In the circumstances, she has filed the present Transfer Civil Miscellaneous Petition to withdraw F.C.O.P.No.296 of 2016 pending on the file of the Family Court, Salem and transfer the same to the file of the Principal Family Court, Coimbatore to be tried along with H.M.O.P.No.537 of 2017 and M.C.No.75 of 2017 on the file of the Principal Family Court, Coimbatore.

4. Heard 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 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 the residence of wife also must be taken into consideration while disposing Transfer Petition.

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, in the interest of justice, in order to avoid multiplicity of proceedings and conflicting judgments being delivered by two different Courts, the petition in F.C.O.P.No.296 of 2016 is ordered to be withdrawn from the file of the Family Court, Salem and transferred to the file of Principal Family Court, Coimbatore to be tried along with H.M.O.P.No.537 of 2017 and M.C.No.75 of 2017 pending on the file of the Principal Family Court, Coimbatore. The learned Family Court Judge, Salem, is directed to transmit all the records pertaining to F.C.O.P.No.296 of 2016 to the file of the Principal Family Court, 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/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

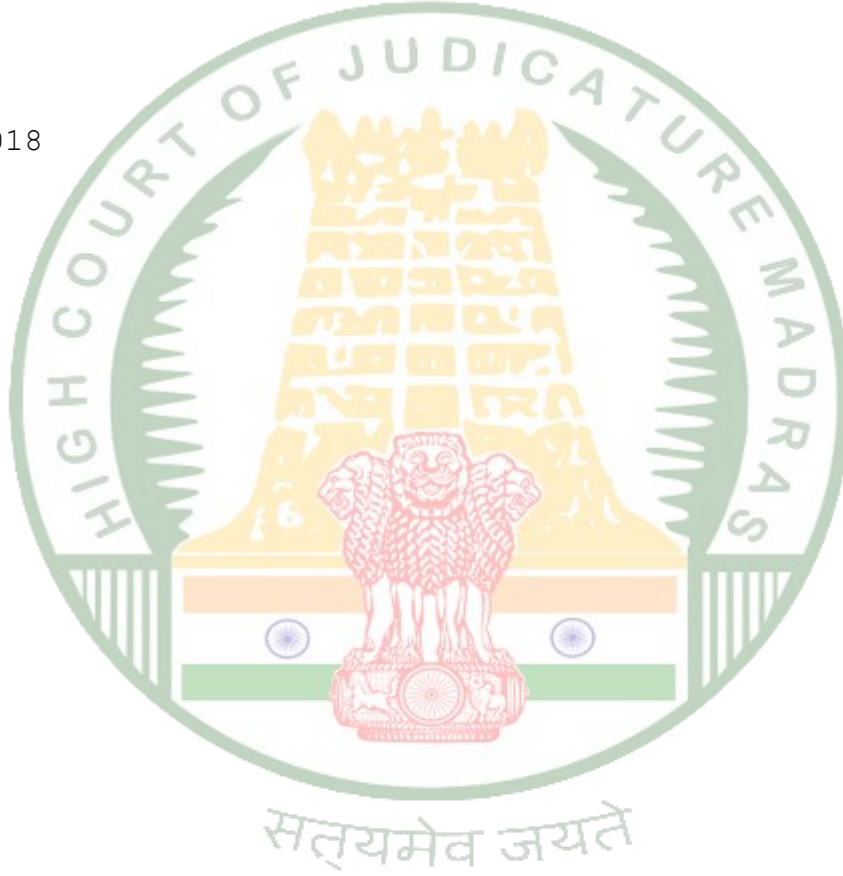
1.The Family Court Judge,
Salem District.

2.The Principal Family Court Judge,
Coimbatore District.

+1 cc to Mr.V.Chinnasamy Advocate sr 24446

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