

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P. No.802 of 2017

and C.M.P.No.16261 of 2017

E.Vanisree

...Petitioner

Vs.

V.Ejaumalai

... Respondent

Prayer:- Petition has been filed under Section 24 of C.P.C., to withdraw and transfer the case in M.O.P.No.148 of 2017 on the file of the Family Court, Pondicherry, to the file of I Additional Family Court, Chennai, for joint trial along with H.M.O.P.No.1785 of 2017.

For Petitioner : Mr.J.R.K.Bhavanantham

For Respondent : Mr.K.Sasindran

O R D E R

This petition is filed to withdraw and transfer the case in M.O.P.No.148 of 2017 on the file of the Family Court, Pondicherry, to the file of I Additional Family Court, Chennai, for joint trial along with H.M.O.P.No.1785 of 2017.

2.The petitioner is the wife and respondent is the Husband. The marriage between the petitioner and respondent was conducted on 12.02.2016 as per Hindu rites and customs. After marriage, both the petitioner and respondent were living in the matrimonial home at Puducherry. Due to difference of opinion between the petitioner and respondent, both are living separately. The petitioner has filed H.M.O.P.No.1785 of 2017 on the file of the I Additional Family Court, Chennai, against the respondent, for restitution of conjugal rights. The respondent also filed M.O.P.No.148 of 2017 on the file of the Family Court, Pondicherry, for divorce against the petitioner.

3.According to the petitioner, she is residing at Chennai along with her parents. It is very difficult for her to travel such a long distance to attend the Court proceedings at

Pondicherry. Further, she is not having any independent income and she is depending on her parents for her day-to-day expenses. Unless both the H.M.O.Ps. are heard together and decided jointly, there will be conflicting judgments. In these circumstances, the petitioner has come out with the present Tr.C.M.P. to transfer M.O.P.No.148 of 2017 pending on the file of the Family Court, Pondicherry, to the file of the I Additional Family Court, Chennai, for joint trial along with H.M.O.P.No.1785 of 2017.

4.The respondent filed counter and made various allegations against the petitioner and her family members. According to the respondent, the petitioner's father along with her relatives brutally attacked him by tying his hands and legs on 17.12.2016 at 10.45 P.M. using cricket bat and wooden log and confined him in a room on the whole night and also, stole the golden ornaments, money and original Certificates from his house. Due to the said attack, he was admitted in the Government General Hospital, Puducherry, on 18.12.2016 and treated as inpatient till 20.12.2016. Hence, his brother lodged a complaint in the Villianur Police Station, against the parents of the petitioner and her sister and brother-in-law. Based on the complaint, the police officials has only recorded the statement. But, they have not registered any FIR against the parents of the petitioner and others. The respondent filed a petition before the learned Judicial Magistrate No.III, Puducherry, and as per directions of the learned Judicial Magistrate, FIR was registered. If the respondent comes to Chennai to attend the hearing before the Family Court, Chennai, there is a life threat to him. Therefore, he prayed for dismissal of the transfer petition.

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

6.Considering the above contention of the learned counsel for the petitioner and well settled judicial pronouncement of 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], the convenience of the wife must be given preference in the matrimonial proceedings. Further, as per the provisions of the Hindu Marriage Act, place of residence of wife must be taken into account.

7.In the present case, the respondent alleged that the petitioner's family members assaulted the respondent and a case has been registered in this regard. The petitioner has also given a complaint against the respondent.

8.Considering the allegations and the counter allegations made by the petitioner and respondent, in the interest of Justice, both the O.P.s are transferred to a common place instead of the Court at Puducherry or Chennai.

9.In the result, the petitions in M.O.P.No.148 of 2017 and H.M.O.P.No.1785 of 2017 are ordered to be withdrawn from the file of the Family Court, Pondicherry and I Additional Family Court, Chennai, respectively and transferred to the file of the Family Court, Chengalpattu. The learned Judge, Family Court, Pondicherry, is directed to transmit all the records pertaining to M.O.P.No.148 of 2017 to the file of the Family Court, Chengalpattu, within a period of two weeks from the date of receipt of a copy of this order. The learned I Additional Family Court, Chennai, is also directed to transmit all the records pertaining to H.M.O.P.No.1785 of 2017 to the file of the Family Court, Chengalpattu, within a period of two weeks from the date of receipt of a copy of this order.

Accordingly, the Transfer Civil Miscellaneous Petition is ordered. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mps

To

- 1.The Judge, Family Court, Pondicherry.
- 2.The I Additional Family court Judge, Chennai.
- 3.The Judge, Family Court, Chengalpattu.

+1cc to Mr.K.SASINDRAN, Advocate, S.R.No. 30827

Tr.C.M.P. No.802 of 2017
and C.M.P.No.16261 of 2017

EV(CO)
TR(14/06/2018)