

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2018

CORAM :

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Tr.C.M.P. Nos.814 and 815 of 2017
and C.M.P.Nos.16824 and 16825 of 2017

S.Bhavani ... Petitioner in
both Tr.CMPs./Respondent

Vs.

R.Ramesh ... Respondent in
both Tr.CMPs./Petitioner

Prayer in Tr.C.M.P.No.814 of 2017:- Petition is filed under Section 24 of C.P.C., to withdraw O.P.No.342 of 2013 pending on the file of III Additional Family Court, Chennai and transfer the same to the file of Sub Court, Thoothukudi.

Prayer in Tr.C.M.P.No.815 of 2017:- Petition is filed under Section 24 of C.P.C., to withdraw O.P.No.1990 of 2015 pending on the file of III Additional Family Court, Chennai and transfer the same to the file of Sub Court, Thoothukudi.

In both Tr.CMPs.

For Petitioner

: Mr.Anna Raja

for Mr.S.Anil Sandeep

For Respondent

: Mr.G.Saravanan

C O M M O N O R D E R

The Transfer Civil Miscellaneous Petitions are filed to withdraw O.P.Nos.342 of 2013 and 1990 of 2015 pending on the file of III Additional Family Court, Chennai and transfer the same to the file of Sub Court, Thoothukudi.

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 10.07.2011 as per Hindu rites and customs. Due to torture by

the respondent and his family members, the petitioner left the matrimonial home on 26.09.2011. She has initiated various proceedings including criminal proceedings against the respondent. The petitioner filed O.S.No.1990 of 2015 on the file of III Additional Family Court, Chennai, for divorce against the respondent by making various allegations. The respondent filed O.P.No.342 of 2013 on the file of III Additional Family Court, Chennai, against the petitioner, for divorce. Both the O.Ps. are pending joint trial.

4. According to the petitioner, she is residing in her parents home at Thoothukudi. The distance between Thoothukudi and Chennai is more than 650 kilometers and being a lady, it will be very difficult for her to travel such a long distance to attend the Court proceedings at Chennai for each and every hearing. Further, she has no independent income, she is depending on her brother to meet out her day-to-day expenses including travelling expenses. The petitioner has to spend considerable amount for ticket as well as boarding and lodging for herself and for the person accompanying her. In the circumstances, the petitioner has come out with the present Tr.C.M.Ps. to transfer O.P.Nos.342 of 2013 and 1990 of 2015 pending on the file of III Additional Family Court, Chennai, to the file of Sub Court, Thoothukudi.

5. The learned counsel for the respondent filed counter and contended that the petitioner has filed O.P.No.1990 of 2015 before III Additional Family Court, Chennai and also filed M.C.No.17 of 2013 under Domestic Violence Act, on the file of XXIII Metropolitan Magistrate's Court, Chennai and the same are pending. Therefore, Court at Thoothukudi is not having any jurisdiction. The petitioner has come out with the present Transfer Petitions after commencement of trial and prayed for dismissal of both the Transfer Petitions.

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

7. From the materials available on record, it is seen that the respondent has filed O.P.No.342 of 2013 on the file of III Additional Family Court, Chennai. The petitioner has filed O.P.No.1990 of 2015 on the file of III Additional Family Court, Chennai and M.C.No.17 of 2013 on the file of XXIII Metropolitan Magistrate's Court, Saidapet, Chennai. Both the petitioner and respondent filed H.M.O.Ps. for the very same relief against each other.

8. According to the petitioner, she is residing at Thoothukudi and at that time, on the advice of her advocate, she has filed O.P.No.1990 of 2015 before the Court at Chennai. Now

she finds it very difficult to travel from Thoothukudi to Chennai, as she has to spend considerable amount to attend the Court proceedings at Chennai, for each and every hearing. The learned counsel for the petitioner further contended that the respondent has filed proof affidavit and O.P.No.342 of 2013 is pending for examination of parties.

9.Considering the above contentions of the learned counsel for the petitioner as well as respondent 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.

10.Accordingly, the Transfer Civil Miscellaneous Petitions are ordered. Both the petitions in O.P.Nos.342 of 2013 and 1990 of 2015 are ordered to be withdrawn from the file of III Additional Family Court, Chennai and transferred to the file of Sub Court, Thoothukudi, for joint trial. The learned Judge, III Additional Family Court, Chennai, is directed to transmit all the records pertaining to O.P.Nos.342 of 2013 and 1990 of 2015 to the file of Sub Court, Thoothukudi, for joint trial, within a period of two weeks from the date of receipt of a copy of this order. As the O.Ps. are of the year 2013 and 2015, the learned Subordinate Judge, Thoothukudi, is directed to dispose of O.Ps. on day-to-day basis and in any event, not later than three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

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To

1.The Subordinate Judge, Thoothukudi.

2.The Judge, III Additional Family Court, Chennai.

+2cc to Mr.S.Anil Sandeep, Advocate, S.R.No.45101, 45102

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GJII (CO)

CS/10/08/18