

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P. No.900 of 2017
and C.M.P.No.18265 of 2017

S.Kavitha

... Petitioner/ Respondent

Vs.

S.V.Suresh

... Respondent/ Petitioner

Prayer:- Petition has been filed under Section 24 of C.P.C., to withdraw H.M.O.P.No.1083 of 2016 pending on the file of the IV Additional Family Court, Chennai and transfer the same to the file of the Subordinate Court, Tindivanam.

For Petitioner : Mr.G.Nirmal Krishnan

For Respondent : Mr.R.Diwakaran

O R D E R

This petition is filed to withdraw H.M.O.P.No.1083 of 2016 pending on the file of the IV Additional Family Court, Chennai and transfer the same to the file of the Subordinate Court, Tindivanam.

2.The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was conducted on 22.08.2005 as per Hindu rites and customs. After marriage, both were living together in the matrimonial home in Chennai. In the wedlock, two female children and one male child were born. Thereafter, the respondent had started harassing the petitioner at the instigation of his mother and his family members and thrown her out from the matrimonial home on 02.12.2014. On 03.12.2014, the petitioner lodged a complaint before the W-18, All Women Police Station, Bharathi Nagar, Chennai and C.S.R. also issued. The petitioner also filed D.V.No.1 of 2016 against the respondent before the Judicial Magistrate's Court No.I, Tindivanam and the same is pending. While so, the respondent filed H.M.O.P.No.1083 of 2016 on the file of the IV Additional Family Court, Chennai, for divorce, making false allegations against the petitioner.

3. According to the petitioner, she is residing at Tindivanam, Villupuram District. The distance between Tindivanam and Chennai is more than 125 kilometers and hence, it is difficult for her to travel such a long distance to attend the Court proceedings in Chennai, wherein presence of spouse is mandatory for each and every hearing. The respondent is an influential person and hence, she apprehends that the respondent and his family members will give trouble to her, when she attends the Court proceedings in Chennai. Further, she has no one to accompany her to travel such a long distance and she has no independent income to meet out the travelling expenses. In the circumstances, the petitioner has come out with the present Tr.C.M.P. to transfer H.M.O.P.No.1083 of 2016 from the file of the IV Additional Family Court, Chennai, to the file of the Subordinate Court, Tindivanam.

4. Though the respondent entered appearance through counsel and submitted that there is a life threat to the respondent in Tindivanam, he has not filed any document to substantiate his contention.

5. Heard the learned counsel for the petitioner as well as the 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, place of residence of wife must be taken into account.

7. 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 residence of the petitioner is at Tindivanam, the petition in H.M.O.P.No.1083 of 2016 is ordered to be withdrawn from the file of the IV Additional Family Court, Chennai and transferred to the file of the Subordinate Court, Tindivanam. The learned IV Additional Family Judge, Chennai, is directed to transmit all the records pertaining to H.M.O.P.No.1083 of 2016 to the file of the Subordinate Court, Tindivanam, within a period of two weeks from the date of receipt of a copy of this order.

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

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

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To

1.The IV Additional Family Judge, Chennai.

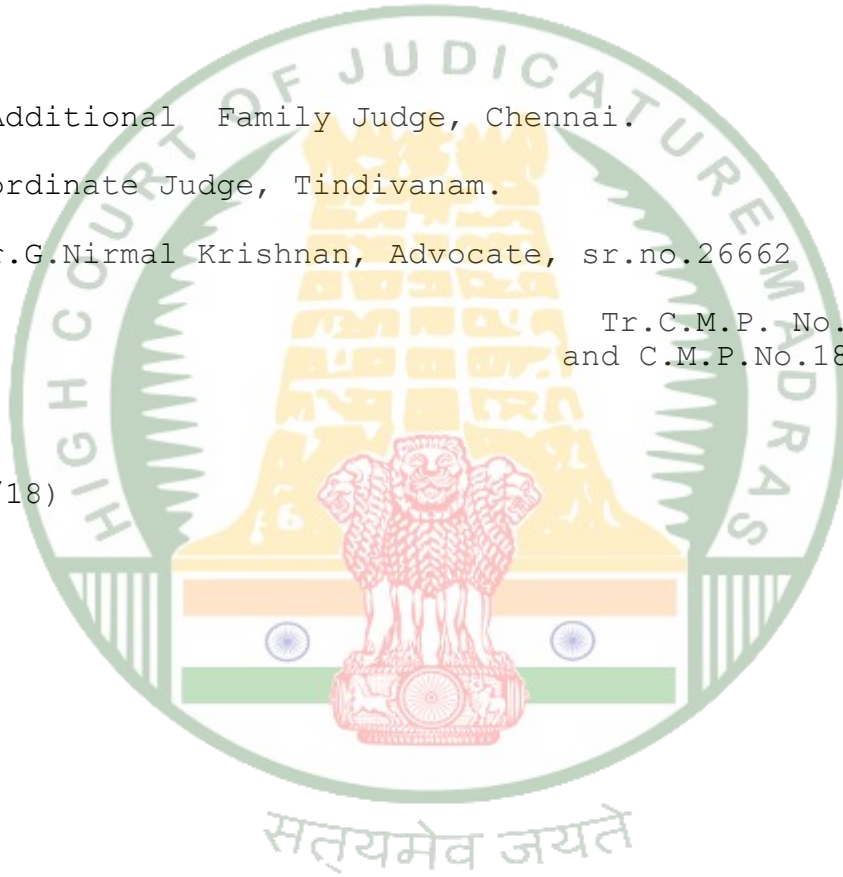
2.The Subordinate Judge, Tindivanam.

+1cc to Mr.G.Nirmal Krishnan, Advocate, sr.no.26662

Tr.C.M.P. No.900 of 2017
and C.M.P.No.18265 of 2017

MR (CO)

RRK (23/05/18)



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