

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P. No.124 of 2018
and C.M.P.No.3326 of 2018

R.Devi

... Petitioner

Vs.

R.Kaliyaperumal

... Respondent

Prayer:- Petition is filed under Section 24 of C.P.C., to withdraw H.M.O.P.No.175 of 2017 pending on the file of Sub Court, Perambalur and transfer the same to the file of Family Court, Tiruchirappalli, to be tried along with H.M.O.P.No.315 of 2017, pending on its file.

For Petitioner : Mr.P.Babu

For Respondent : No appearance

O R D E R

This petition is filed to withdraw H.M.O.P.No.175 of 2017 pending on the file of Sub Court, Perambalur and transfer the same to the file of Family Court, Tiruchirappalli, to be tried along with H.M.O.P.No.315 of 2017, pending on its file.

2.The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was conducted on 14.07.2008 as per Hindu rites and customs. In the wedlock, a female child was born on 20.01.2011. Due to torture and cruelty, the petitioner left the matrimonial home. The petitioner's parents have lodged a complaint before All Women Police Station, Perambalur, against the respondent. While so, the respondent filed H.M.O.P.No.175 of 2017 on the file of Sub Court, Perambalur, against the petitioner for restitution of conjugal rights. The petitioner also filed H.M.O.P.No.315 of 2017 before the Family Court, Tiruchirappalli, against the respondent for divorce.

3.According to the petitioner, she is residing along with her parents and minor child at Tiruchirappalli. The distance between Tiruchirappalli and Perambalur is more than 60 kilometers, hence, it will be very difficult for her to travel such a long distance to attend each and every hearing of the Court proceedings at Perambalur. In the circumstances, the petitioner has come out with the present Transfer Civil Miscellaneous Petition to transfer H.M.O.P.No.175 of 2017

pending on the file of Sub Court, Perambalur, to the file of Family Court, Tiruchirappalli, to be tried along with H.M.O.P.No.315 of 2017 pending on its file, in order to avoid conflicting decisions being rendered by two different Courts.

4.Heard the learned counsel for the petitioner and perused the materials available on record. Though the respondent entered appearance through advocate, today there is no representation on behalf of the respondent.

5.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.

6.Accordingly, the Transfer Civil Miscellaneous Petition is ordered. The petition in H.M.O.P.No.175 of 2017 is ordered to be withdrawn from the file of Sub Court, Perambalur and transferred to the file of Family Court, Tiruchirappalli to be tried along with H.M.O.P.No.315 of 2017 filed by the petitioner in order to avoid multiplicity of proceedings and conflicting judgments being delivered by two different Courts. The learned Subordinate Judge, Perambalur, is directed to transmit all the records pertaining to H.M.O.P.No.175 of 2017 to the file of Family Court, Tiruchirappalli, within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Judge, Perambalur.

2.The Judge, Family Court, Tiruchirappalli.

+1cc to Mr.P.Babu, Advocate, S.R.No.48306

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SMI/09.08.2018