

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P. Nos.156 and 160 of 2018

and C.M.P.Nos.4247 and 4328 of 2018

D.Gayathri Priya

... Petitioner in both
Tr.C.M.Ps./Respondent

Vs.

S.Madhan Mohan

... Respondent in both
Tr.C.M.Ps./Petitioner

COMMON PRAYER:- Petitions have been filed under Section 24 of C.P.C., to withdraw G.O.P.No.31 of 2017 pending on the file of the District Court, Thiruvarur, and H.M.O.P.No.70 of 2017 pending on the file of the Subordinate Court, Thiruvarur, and transfer the in to the file of the I Additional Family Court, Chennai respectively.

For Petitioner : Mr.N.Rajan

For Respondent : No Appearance

C O M M O N O R D E R

These petitions are filed to withdraw G.O.P.No.31 of 2017 pending on the file of the District Court, Thiruvarur and H.M.O.P.No.70 of 2017 pending on the file of the Subordinate Court, Thiruvarur and transfer the same to the file of the I Additional Family Court, Chennai respectively.

2.The issues and the parties involved in both the Transfer Civil Miscellaneous Petitions are one and the same and therefore, 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 09.04.2009 at Sri VRN, Thirumana Mandabam, Thiruvarur as per Hindu Rites and Customs. In the wedlock, a male child was born on 22.10.2011 and he is now studying I standard. Due to cruelty and ill treatment, the petitioner left the matrimonial home. The petitioner is residing in Anna Nagar, Chennai 600 040 along with

her minor child. The respondent was depending on the petitioner's meager income for the livelihood. It is very difficult for her to face the financial difficulties and educational expenses of her son. On 20.05.2017, the respondent took the minor child and went out of the matrimonial home. On the complaint given by the petitioner, the respondent handed over the minor child to the petitioner. The respondent filed H.M.O.P.No.70 of 2017 on the file of the Subordinate Court, Thiruvarur for divorce against the petitioner and also G.O.P.No.31 of 2017 on the file of the District Court, Thiruvarur. H.M.O.P.No.70 of 2017 was posted for filing counter on 02.03.2018 and G.O.P.No.31 of 2017 was posted for hearing on 05.03.2018.

4. According to the petitioner, she is not having parents and it is very difficult for her to take care of her minor child. Her parents died long back. She is living with her minor child without any help from others. It is very difficult for her to go to Thiruvarur to attend two different cases and it is impossible to attend all the dates of hearing. Only to give harassment, the respondent has filed those cases at Thiruvarur. The petitioner filed H.M.O.P.No.642 of 2018 on the file of the I Additional Family Court, Chennai for restitution of conjugal rights. The said case is posted to 19.03.2018. The respondent entered appearance and is appearing before the Family Court, Chennai in H.M.O.P.No.642 of 2018, filed by the petitioner. In the circumstances, the petitioner has come out with the present two Transfer Civil Miscellaneous Petitions to withdraw G.O.P.No.31 of 2017 and H.M.O.P.No.70 of 2017 pending on the file of the District Court, Thiruvarur and Subordinate Court, Thiruvarur respectively and transfer the same to the file of the I Additional Family Court, Chennai.

5. The learned counsel for the petitioner submitted that the minor son is studying in I standard in Vivekanandha School, Korattur and hence the interest of the minor has to be taken into consideration while deciding the issue in G.O.P.No.31 of 2017.

6. Heard learned counsel for the petitioner and perused the materials available on record. Though the respondent entered appearance through counsel, there is no representation for him.

7. 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 Hindu Marriage Act, the place

of residence of the petitioner must be taken into account and the interest of the minor is a paramount consideration while considering the petition for custody of minor.

8. 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 the residence of the petitioner at Chennai and minor son is studying I standard in Vivekananda School, Korattur, the petitions in G.O.P.No.31 of 2017 and H.M.O.P.No.70 of 2017 are ordered to be withdrawn from the file of District Court, Thiruvarur and Subordinate Court, Thiruvarur respectively and transferred to the file of the I Additional Family Court, Chennai, to be tried along with H.M.O.P.No.642 of 2018 in the interest of justice, in order to avoid multiplicity of proceedings and conflicting judgments being delivered by two different Courts. Both the District Judge, Thiruvarur and Subordinate Judge, Thiruvarur are respectively directed to transmit all the records pertaining to G.O.P.No.31 of 2017 and H.M.O.P.No.70 of 2017 to the file of the I Additional Family Court, Chennai within a period of two weeks from the date of receipt of a copy of this order.

9. Accordingly, these Transfer Civil Miscellaneous petitions are ordered. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-iv)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Judge, I Additional Family Court,
Chennai.

2. The District Judge,
Thiruvarur

3. The Subordinate Judge,
Thiruvarur

+2cc to Mr.N.RAJAN, Advocate, S.R.No. 24763 & 24764

Tr.C.M.P. Nos.156 and 160 of 2018
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MR (CO)

TR(24/04/2018)