

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Tr.C.M.P.No.163 of 2018  
and C.M.P.No.4398 of 2018

Indhirani @ Indhu

.. Petitioner

Vs.

A.Suresh

.. Respondent

PRAYER: This petition has been filed under Section 24 C.P.C to withdraw H.M.O.P.No.149 of 2017 pending on the file of the Sub Court, Cheyyar and transfer the same to the file of the Family Court, Chennai.

For Petitioner : Mr.V.Balasubramani

For Respondent : Mr.V.R.Appaswamee

O R D E R

This Petition has been filed to withdraw H.M.O.P.No.149 of 2017 pending on the file of the Sub Court, Cheyyar and transfer the same to the file of the Family Court, Chennai.

2.The petitioner is the wife and respondent is the husband. The marriage between petitioner and respondent was conducted on 12.09.2010 at Mambattu Village, Vandavasi Taluk as per Hindu Rites and Customs. The respondent is working at Chennai. After marriage, both the petitioner and respondent came to Chennai and were residing in Vadapalani, Chennai. In the wedlock, two male children were born. Elder son, Karthick died during Vardha Cyclone in December 2016.

2(a).The Tamilnadu Government gave compensation of Rs.4,00,000/- for the loss of their son in the name of the petitioner. The said sum of Rs.4,00,000/- was deposited in the joint name of petitioner and respondent at Indian Bank, Vadapalani Branch in SB Account Number 864169645. Subsequently, the same was deposited in the Fixed Deposit jointly in their name. The Central Government also gave compensation of a sum of Rs.2,00,000/- and issued cheque in the name of the petitioner.

According to the petitioner, the respondent forcefully collected the said cheque and deposited in the fixed deposit in the joint name and withdrew the sum of Rs.2,00,000/- from the account without her concern.

2(b).At the instigation of the mother and sister of respondent, dispute arose between the petitioner and respondent and the respondent filed H.M.O.P.No.149 of 2017 for divorce before the Sub Court, Cheyyar. The respondent has given address of both the petitioner and respondent as though they are residing in Mampattu Village, Vandavasi Taluk, while both are residing only in Vadapalani, Chennai. The petitioner is working as house-maid and is spending Rs.1000/- per month towards play school fees for the son. The petitioner is taking steps to file H.M.O.P before Family Court at Chennai against the respondent for restitution of conjugal rights. The petitioner is residing in Vadapalani, Chennai. The distance between Chennai and Cheyyar is more than 110 kms. Hence, it will be very difficult for her to travel such a long distance to attend the Court proceedings for each and every hearing. In the circumstances, she has filed the present Transfer Civil Miscellaneous Petition to transfer H.M.O.P.No.149 of 2017 pending on the file of the Sub Court, Cheyyar to the file of the Family Court, Chennai.

3.The learned counsel for the respondent contended that respondent is not residing in Vadapalani, Chennai. Their marriage took place at Mambattu Village, Vandavasi Taluk. Hence, the Sub Court, Cheyyar is the competent Court to entertain and decide the H.M.O.P.No.149 of 2017. In the Sub Court, parties need not appear for every hearing. It is sufficient if they appear during trial and as and when directed by the learned Judge and prayed for dismissal of the Transfer Civil Miscellaneous Petition.

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

5.From the materials available on record, it is seen that the petitioner has stated that both the petitioner and respondent were residing together in Vadapalani, Chennai after the marriage till the dispute arose. Petitioner has shown the address in the Transfer Civil Miscellaneous Petition as both of them are residing separately in Vadapalani, Chennai. Further, the petitioner has stated that respondent is working only in Chennai.

6.Considering these facts 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. Accordingly, the Transfer Civil Miscellaneous Petition is ordered. The petition in H.M.O.P.No.149 of 2017 is ordered to be withdrawn from the file of the Sub Court, Cheyyar and transferred to the file of the Family Court, Chennai. The learned Subordinate Judge, Cheyyar is directed to transmit all the records pertaining to H.M.O.P.No.149 of 2017 to the file of the Family Court, Chennai 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-vii)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Subordinate Judge, Cheyyar

2. The Judge, Family Court, Chennai.

+1cc to Mr.V.R.APPASWAMEE, Advocate, S.R.No.37734  
+1cc to Mr.M.ARUNACHALAM, Advocate, S.R.No. 37456

Tr.C.M.P.No.163 of 2018  
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TR(02/07/2018)

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