

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P. No.199 of 2018
and C.M.P.No.5215 of 2018

S.Saranya

... Petitioner

Vs.

V.Ganesh

... Respondent

Prayer:- Petition has been filed under Section 24 of C.P.C., to withdraw H.M.O.P.No.661 of 2017 pending on the file of the Subordinate Court, Poonamallee and transfer the same to the file of the VI Additional Family Court, Chennai.

For Petitioner : M/s.K.Sumathi

For Respondent : Mr.Dalit Tiger C.Ponnusamy

O R D E R

This petition is filed to withdraw H.M.O.P.No.661 of 2017 pending on the file of the Subordinate Court, Poonamallee and transfer the same to the file of the VI Additional Family Court, Chennai.

2.The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was conducted on 18.01.2015 at K.V.N. Kalyana Mandapam, situated at No.1, Poonamallee High Road, Vellappan Chavadi, Chennai 600 077. After the marriage, both the petitioner and respondent were living together in the matrimonial home at Maduravoyal, Chennai 600 077. In the wedlock, a male child was born on 15.05.2016. Due to difference of opinion, petitioner left the matrimonial home.

3.According to the petitioner, originally her permanent address was Thiruvottriyur. Now she is residing at Villivakkam in the house of her paternal uncle. She has filed O.P.No.383 of 2018 on the file of the VI Additional Family Court for divorce. The respondent filed H.M.O.P.No.661 of 2017 on the file of the Subordinate Court, Poonamallee for restitution of conjugal rights. The petitioner attended first hearing on 09.01.2018. The petitioner is working in Accenture and it is very difficult for her to get leave to attend the hearing twice in a month. Further

if both the O.P.No.383 of 2018 filed by the petitioner and H.M.O.P.No.661 of 2017 filed by the respondent are heard and tested by two different Courts, there is possibility of delivering conflicting judgments by two different Courts. Further, the respondent is residing in Maduravoyal. If the H.M.O.P.No.661 of 2017 is transferred to Family Court, Chennai, he will not be prejudiced and it will not be difficult for him to travel to Chennai from Maduravoyal. In the circumstances, the petitioner has come out with the present Transfer Civil Miscellaneous Petition to withdraw H.M.O.P.No.661 of 2017 from the file of the Subordinate Court, Poonamallee and transfer to the file of the VI Additional Family Court, Chennai to be tried along with O.P.No.383 of 2018.

4.The learned counsel for the respondent filed typed set of papers and contended that the petitioner is residing at Thiruvottriyur. She has given fake address as though she is residing in Villivakkam, in order to create jurisdiction to file before Family Court, Chennai. She has filed false affidavit and she has not approached the Court with clean hands. The O.P.No.383 of 2018 is liable to be dismissed on this ground alone. In addition to above submissions, the learned counsel for the respondent made submissions on merits and contended that O.P. filed by the petitioner is not maintainable.

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

6.The respondent has not disputed that he is residing in Maduravoyal. In such case as stated by the petitioner, it will not be difficult for the respondent to travel to Chennai to attend the proceedings before the Family Court, Chennai. Further, if both the O.P.No.383 of 2018 filed by the petitioner and H.M.O.P.No.661 of 2017 filed by the respondent are heard and tested by the two different Courts, there is possibility of contradictory judgments being delivered.

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 the Hindu Marriage Act, the place of the residence of wife must be taken into account.

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 is at Chennai, the petition in H.M.O.P.No.661 of 2017 is ordered to be withdrawn from the file of the Subordinate Court, Poonamallee

and transferred to the file of the VI Additional Family Court, Chennai to be tried along with O.P.No.383 of 2018 in the interest of justice, in order to avoid multiplicity of proceedings and conflicting judgments being delivered by two different Courts. The learned Subordinate Judge, Poonamallee, is directed to transmit all the records pertaining to H.M.O.P.No.661 of 2017 to the file of the VI Additional Family Court, Chennai, within a period of two weeks from the date of receipt of a copy of this order. It is open to the respondent to raise all the objections mentioned in the counter affidavit before the VI Additional Family Court, Chennai and the same can be decided in accordance with law.

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

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Subordinate Judge,
Poonamallee.

2.The VI Additional Judge,
Family Court,
Chennai

+2cc to M/s.K.Sumathi, Advocate sr.no.25861

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NRL(CO)
NR 08/05/2018

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