

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P. No.218 of 2018

and C.M.P.No.5541 of 2018

K.Rajakumari

... Petitioner

Vs.

V.Balasubramaniam

... Respondent

Prayer:- Petition is filed under Section 24 of C.P.C., to withdraw H.M.O.P.No.144 of 2016 pending on the file of Principal Sub Court, Dindigul and transfer the same to the file of Principal Sub Court, Gingee, to be tried along with H.M.O.P.No.38 of 2017, pending on its file.

For Petitioner : Mr.V.Bhiman

For Respondent : Mr.S.Rajkumar

O R D E R

This petition is filed to withdraw H.M.O.P.No.144 of 2016 pending on the file of Principal Sub Court, Dindigul and transfer the same to the file of Principal Sub Court, Gingee, to be tried along with H.M.O.P.No.38 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 06.03.2009 as per Hindu rites and customs. In the wedlock, a male child was born on 13.04.2011. Due to difference of opinion, both the petitioner and respondent are living separately. The respondent filed H.M.O.P.No.144 of 2016 on the file of the Principal Sub Court, Dindigul, against the petitioner for divorce. The petitioner filed H.M.O.P.No.38 of 2017 on the file of the Principal Sub Court, Gingee, against the respondent for restitution of conjugal rights.

3.According to the petitioner, she is residing at Gingee along with her parents and minor child. The distance between Gingee and Dindigul is more than 295 kilometers and hence it will be very difficult for her to travel such a long distance to attend the Court proceedings at Dindigul. She is not having any independent income and is depending on her parents for her day-to-day expenses including traveling expanses. In the

circumstances, the petitioner has come out with the present Tr.C.M.P. to transfer H.M.O.P.No.144 of 2016 pending on the file of Principal Sub Court, Dindigul to the file of Principal Sub Court, Gingee, to be tried along with H.M.O.P.No.38 of 2017, pending on its file.

4.The learned counsel for the respondent submitted that the respondent is working at Dindigul. The respondent has filed H.M.O.P.No.144 of 2016, for divorce in the year 2016 and the petitioner has filed H.M.O.P.No.38 of 2017, for restitution of conjugal rights in the year 2017. The distance between Dindigul and Gingee is more than 295 kilometers and hence it will be very difficult for him to travel such a long distance to attend the Court proceedings at Gingee and prayed for dismissal of the Tr.C.M.P.

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

6.Considering the above contention of the learned counsel for the petitioner as well as the respondent 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.144 of 2016 is ordered to be withdrawn from the file of Principal Sub Court, Dindigul and transferred to the file of Principal Sub Court, Gingee, to be tried along with H.M.O.P.No.38 of 2017 filed by the petitioner, in order to avoid multiplicity of proceedings and conflicting decisions being rendered by two different Courts. The learned Principal Subordinate Judge, Dindigul, is directed to transmit all the records pertaining to H.M.O.P.No.144 of 2016 to the file of Principal Sub Court, Gingee, 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 II)

//True Copy//

Sub Assistant Registrar

To

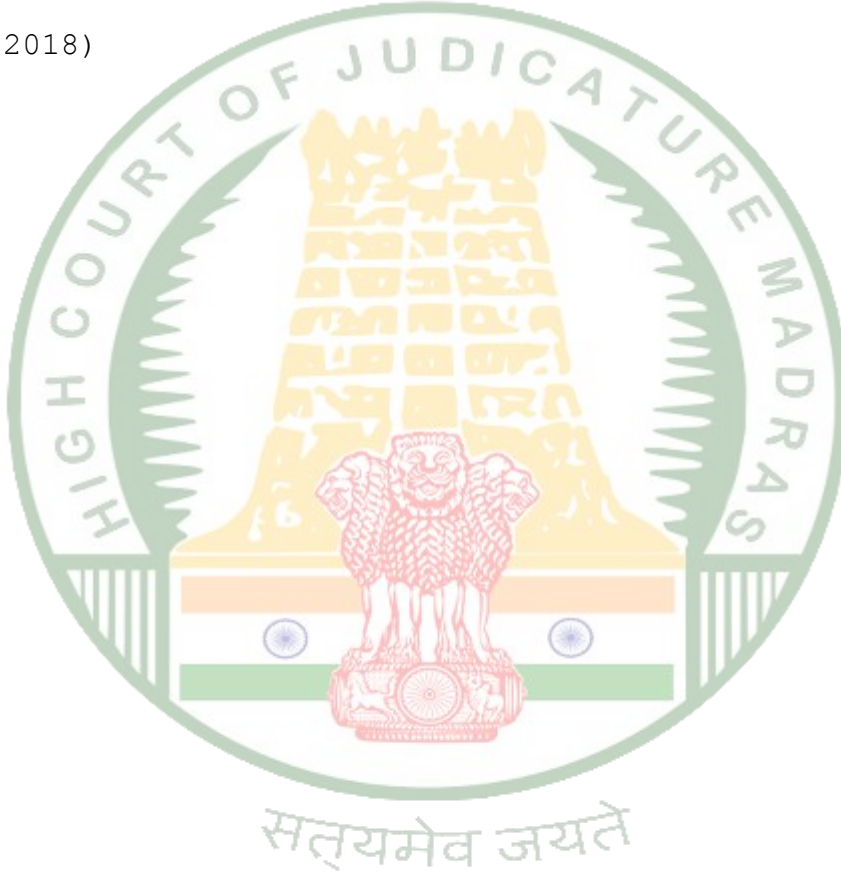
1.The Principal Subordinate Judge, Gingee.

2.The Principal Subordinate Judge, Dindigul.

+1cc to Mr.V.Bhiman, Advocate, S.R.No.48207

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NMI (CO)
GSP (07/08/2018)



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