

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P.No.223 of 2018
and C.M.P.No.5744 of 2018

P.Kumudha @ Diviya

... Petitioner

Vs.

S.Kamal

... Respondent

Prayer: Petition is filed under Section 24 of C.P.C., to withdraw H.M.O.P.No.668 of 2017 pending on the file of the Sub Court, Poonamallee and transfer the same to the file of the V Additional Family Court, Chennai to be tried along with H.M.O.P.No.4303 of 2017 pending on its file.

For Petitioner : Mr.S.Anburaja

For Respondent : Mr.V.Perarasu

O R D E R

This petition is filed to withdraw H.M.O.P.No.668 of 2017 pending on the file of the Sub Court, Poonamallee and transfer the same to the file of the V Additional Family Court, Chennai to be tried along with H.M.O.P.No.4303 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 16.09.2015 as per Hindu Rites and Customs. The respondent tortured the petitioner and thrown her out from the matrimonial home. The petitioner filed H.M.O.P.No.4303 of 2017 on the file of the V Additional Family Court, Chennai for restitution of conjugal rights. The respondent filed H.M.O.P.No.668 of 2017 on the file of the Sub Court, Poonamallee for divorce on the ground of cruelty, making false allegations, against the petitioner.

3.According to the petitioner, she is residing at Kodambakkam, Chennai along with her parents. It will be very difficult for her to travel from Kodambakkam to Poonamallee to attend each and every hearing. Her parents are aged persons and she has no one to accompany her to go to Poonamallee. In the circumstances, she has filed the present Transfer Civil Miscellaneous Petition to transfer H.M.O.P.No.668 of 2017 from the file of the Sub Court, Poonamallee to the file of V

Additional Family Court, Chennai, to be tried along with H.M.O.P.No.4303 of 2017, pending on its file, in order to avoid conflicting decisions being rendered by two different Courts.

4.The learned counsel for the respondent submitted that if the case is transferred to V Additional Family Court, Chennai, both the petitioner and respondent has to appear for each and every hearing, whereas in the Sub Court at Poonamalle, they can represent through an advocate and hence, prayed for dismissal of the Transfer Civil Miscellaneous Petition.

5.Heard the 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.668 of 2017 is ordered to be withdrawn from the file of the Sub Court, Poonamallee and transferred to the file of the V Additional Family Court, Chennai to be tried along with H.M.O.P.No.4303 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, Poonamallee is directed to transmit all the records pertaining to H.M.O.P.No.668 of 2017 to the file of the V Additional 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(Audit)

//True Copy//

Sub Assistant Registrar

gsa

To

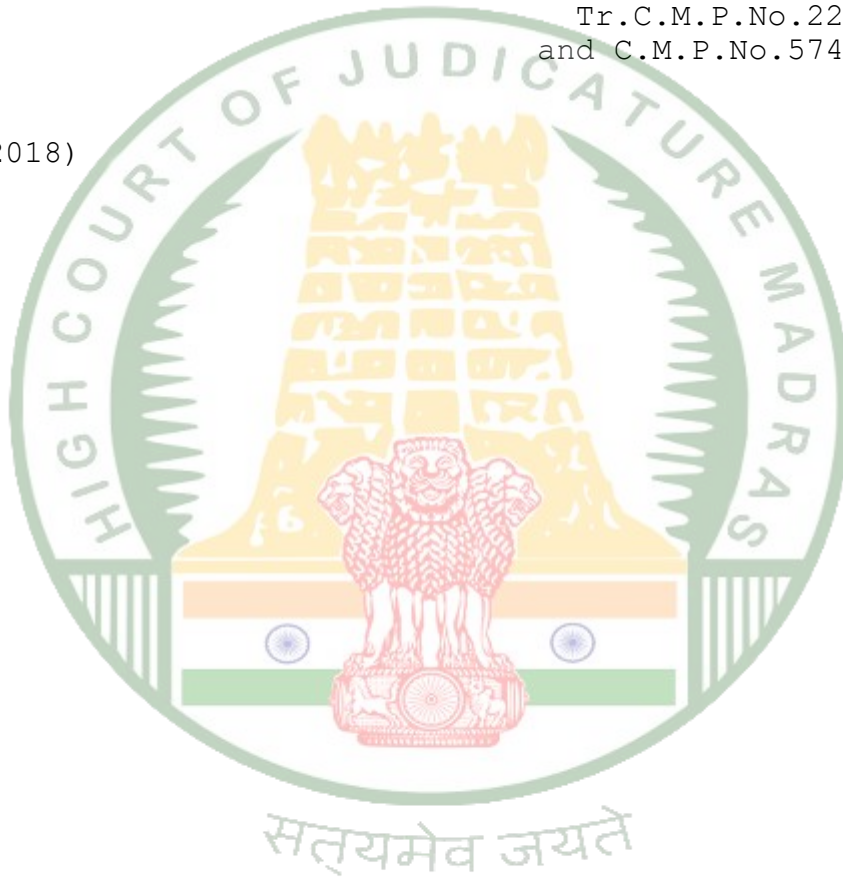
1.The Subordinate Judge,
Poonamallee.

2.The Judge, V Additional Family Court,
Chennai.

+ 1 cc to Mr. S. Anburaja, Advocate SR.46730

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PP(CO)
EU(20/08/2018)



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