

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.238 of 2018
and C.M.P.No.6054 of 2018

1.Jayanthi
2.Raghu

... Petitioners

Vs.

Rajamannar

... Respondent

Prayer: Petition is filed under Section 24 of C.P.C., to withdraw H.M.O.P.No.3 of 2018 pending on the file of the Principal Sub Court, Thindivanam and transfer the same to the file of the Sub Court, Poonamallee.

For Petitioners : Mr.M.Thirumalai
For Respondent : No Appearance

O R D E R

This petition is filed to withdraw H.M.O.P.No.3 of 2018 pending on the file of the Principal Sub Court, Thindivanam and transfer the same to the file of the Sub Court, Poonamallee.

2.The 1st petitioner is the wife, 2nd petitioner is the brother of 1st petitioner and respondent is the husband of 1st petitioner. The marriage between the 1st petitioner and respondent was conducted on 03.07.2001 as per Hindu Rites and Customs. In the wedlock, a female child was born. Due to the torture by the respondent, 1st petitioner left the matrimonial home. While so, the respondent filed H.M.O.P.No.3 of 2018 on the file of the Principal Sub Court, Thindivanam for restitution of conjugal rights against the petitioners.

3.According to the 1st petitioner, she is residing in a remote place in Mettupalayam Village, Thiruvallur District along with her unmarried daughter, aged parents and brother/2nd petitioner. She is not having sufficient income to maintain herself and her daughter. It will be very difficult for her to travel from Mettupalayam, Thiruvallur District to Thindivanam to attend each and every hearing. Her brother, the 2nd petitioner is an aged person, suffering from severe pain on both knees and he is also having severe ailments and could not travel from

Mettupalayam, Thiruvallur District to Thindivanam to attend each and every hearing. In the circumstances, the petitioners have filed the present Transfer civil Miscellaneous Petition to transfer H.M.O.P.No.3 of 2018 from the file of the Principal Sub Court, Thindivanam to the file of Sub Court, Poonamallee.

4.Heard the counsel for the petitioners and perused the materials available on record. Though notice has been served on the respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

5.Considering the above contention of the learned counsel for the petitioners 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.

6.Accordingly, the Transfer Civil Miscellaneous Petition is ordered. The petition in H.M.O.P.No.3 of 2018 is ordered to be withdrawn from the file of the Principal Sub Court, Thindivanam and transferred to the file of the Sub Court, Poonamallee. The learned Principal Subordinate Judge, Thindivanam is directed to transmit all the records pertaining to H.M.O.P.No.3 of 2018 to the file of the Sub Court, Poonamallee 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.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

1.The Principal Subordinate Judge, Thindivanam.

2.The Subordinate Judge, Poonamallee.

+1 CC to M/s. M. Thirumalai, Advocate sr 46825.

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SP(14/08/2018)