

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Tr.C.M.P.No.271 of 2018
and C.M.P.No.6844 of 2018

K.Shanmuga Vadivu

.. Petitioner

Vs.

K.R.Baskara Ramanathan

.. Respondent

PRAYER: This petition has been filed under Section 24 C.P.C to withdraw H.M.O.P.No.137 of 2015 pending on the file of the Sub Court, Pollachi and transfer the same to the file of the Principal Sub Court, Tiruppur to be tried along with H.M.O.P.No.100 of 2018.

For Petitioner : Mr.K.Elango

For Respondent : M/s.D.T.Janardhanan

O R D E R

This Petition has been filed to withdraw H.M.O.P.No.137 of 2015 pending on the file of the Sub Court, Pollachi and transfer the same to the file of the Principal Sub Court, Tiruppur to be tried along with H.M.O.P.No.100 of 2018.

2.The petitioner is the wife and respondent is the husband. The marriage between petitioner and respondent was conducted on 25.06.2007. After marriage, both the petitioner and respondent were living together in the matrimonial home at Kunjupalayam. In the wedlock, a male child was born on 27.03.2008. According to the petitioner, due to torture meted out by the respondent, the petitioner is residing at Tiruppur along with her parents and minor child. The respondent filed H.M.O.P.No.137 of 2015 before the Sub Court, Pollachi, Coimbatore District for divorce against the petitioner. The petitioner has filed M.C.No.2 of 2016 before the Chief Judicial Magistrate, Tiruppur for maintenance of herself and minor son. The said petition was ordered, directing the respondent to pay a sum of Rs.15,000/- each to the petitioner and minor son as maintenance. The respondent has filed Crl.R.C.No.25 of 2017 before II Additional District Court, Tiruppur, challenging the said order and the same is pending. The petitioner has filed H.M.O.P.No.100 of 2018 before the Principal Sub Court, Tiruppur against the respondent for restitution of conjugal rights.

3. According to the petitioner, her father is 67 years old and suffering from various ailments. He is heart patient. Her mother is also old and sick. The petitioner is finding it very difficult to travel from Tiruppur to Pollachi along with minor son 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.137 of 2015 pending on the file of the Sub Court, Pollachi and transfer the same to the file of the Principal Sub Court, Tiruppur to be tried along with H.M.O.P.No.100 of 2018 in order to avoid conflicting decisions being delivered by two different Courts. The petitioner has also made various allegations against the respondent.

4. The respondent filed counter affidavit and denied all the allegations made against him. The learned counsel for the respondent submitted that when the respondent went to Tiruppur to attend the hearing in M.C.No.2 of 2016, the petitioner's father along with his friends abused and assaulted the respondent. The respondent could not conduct the Maintenance Case properly. The respondent has filed Crl.R.C.No.25 of 2017 against the order made in M.C.No.2 of 2016 directing him to pay the maintenance. There is a life threat to the respondent from the hands of the petitioner's father and his friends if he goes to Tiruppur to attend the Court proceedings.

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

6. From the materials available on record, it is seen that the petitioner is residing at Tiruppur along with her aged parents and minor son. For convenience sake, she is seeking transfer of H.M.O.P.No.137 of 2015 pending on the file of the Sub Court, Pollachi to Principal Sub Court, Tiruppur. The respondent is opposing the same on the ground that on earlier occasion, when he went to attend the hearing in M.C.No.2 of 2016, the petitioner's father and his friends abused and assaulted him. The respondent has not filed any materials to substantiate his contention, such as complaint given to the police with regard to alleged incidence. Further Crl.R.C.No.25 of 2017 filed by the respondent is pending before the II Additional District Court, Tiruppur and H.M.O.P.No.100 of 2018 filed by the petitioner is pending before the Principal Sub Court at Tiruppur. In view of the same, to avoid conflicting decisions being delivered by two different Courts, both H.M.O.P.No.137 of 2015 filed by the respondent and H.M.O.P.No.100 of 2018 filed by the petitioner must be heard together.

7.Further, considering the above contention of the learned counsel for the petitioner 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.

8.Accordingly, the Transfer Civil Miscellaneous Petition is ordered. The petition in H.M.O.P.No.137 of 2015 is ordered to be withdrawn from the file of the Sub Court, Pollachi, Coimbatore District and transferred to the file of the Principal Sub Court, Tiruppur to be tried along with H.M.O.P.No.100 of 2018 filed by the petitioner in order to avoid multiplicity of proceedings and conflicting judgments being delivered by two different Courts. The learned Subordinate Judge, Pollachi, Coimbatore District is directed to transmit all the records pertaining to H.M.O.P.No.137 of 2015 to the file of the Principal Sub Court, Tiruppur 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 V)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Principal Subordinate Judge,
Tiruppur.

2.The Subordinate Judge,
Pollachi, Coimbatore District.

3.The Section officer,
V.R.Section,
High Court, Madras (2 Copies)

+1cc to Mr.D.T.Janardhanan, Advocate, S.R.No. 38424.

+1cc to Mr.K.Elango, Advocate, S.R.No.38109

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BM 17/07/2018