

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.306 of 2018

and

C.M.P.No.7748 of 2018

V.Vigneshwari ... Petitioner/Respondent

Vs.

Sundarraaj ... Respondent/Petitioner

PRAYER: This petition has been filed under Section 24 of C.P.C to withdraw H.M.O.P.No.63 of 2017 pending on the file of the Sub Court, Nagapattinam and transfer the same to the file of the Family Court, Karaikal to try the same along with MOP No.47/2018 pending on its file.

For Petitioner : Mr.L.Christopher

For Respondent : Mr.K.C.Karlmarx

O R D E R

This Petition has been filed to withdraw H.M.O.P.No.63 of 2017 pending on the file of the Sub Court, Nagapattinam and transfer the same to the file of the Family Court, Karaikal.

2.The petitioner is the wife and respondent is the husband. According to the petitioner, the marriage between petitioner and respondent was registered on 26.05.2016 before the Sub-Registrar at Thirukuvalai without consent and willingness of the petitioner. The marriage was not consummated between the petitioner and respondent. Even after the marriage, the petitioner is working and residing along with her parents at Karaikal. The respondent has filed H.M.O.P.No.63 of 2017 before the Sub Court, Nagapattinam for restitution of conjugal rights. The petitioner has filed M.O.P.No.47 of 2017 before the Family Court at Karaikal for divorce against the respondent.

3. According to the petitioner, she is residing at Karaikal along with her parents. The distance between Karaikal and Nagapattinam is more than 50 kms. Being a lady, it will be very difficult for her to travel such a long distance 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.63 of 2017 pending on the file of the Sub Court, Nagapattinam to the file of the Family Court, Karaikal to be tried along with M.O.P.No.47 of 2017 in order to avoid conflicting decisions being rendered by two different Courts.

4. The learned counsel for the respondent submitted that there is a life threat from the petitioner if he goes to Karaikal to attend the Court proceedings in H.M.O.P.No.63 of 2017 and prayed for dismissal of the Transfer Civil Miscellaneous Petition.

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 Karaikal. For convenience sake, she is seeking transfer of H.M.O.P.No.63 of 2017 pending on the file of the Sub Court, Nagapattinam to the file of the Family Court, Karaikal. The respondent is opposing the same on the ground that there is a life threat if he goes to Karaikal. The respondent has not filed any materials to substantiate his contentions.

7. Considering the contention of the learned counsel for the petitioner as well as 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.

8. Accordingly, the Transfer Civil Miscellaneous Petition is ordered. The petition in H.M.O.P.No.63 of 2017 is ordered to be withdrawn from the file of the Sub Court, Nagapattinam and

transferred to the file of the Family Court, Karaikal to be tried along with M.O.P.No.47 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, Nagapattinam is directed to transmit all the records pertaining to H.M.O.P.No.63 of 2017 to the file of the Family Court, Karaikal 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(CCC)

//True Copy//

Sub Assistant Registrar

gsa
To

- 1.The Subordinate Judge,
Nagapattinam.
- 2.The Judge,
Family Court, Karaikal.

+1cc to Thiru L.Christopher, Advocate Sr.38143
+1cc to Thiru K.C.Karl Marx, Advocate Sr.38207

सत्यमेव जयते

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mr[co]
srg 16/07/2018

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