

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P. No.340 of 2018
and C.M.P.No.8686 of 2018

Thenmozhi .. Petitioner/Defendant

Vs.

S.Kalaiselvan ... Respondent/Petitioner

Prayer:- Petition is filed under Section 24 of C.P.C., to withdraw H.M.O.P.No.111 of 2017 pending on the file of Sub Court, Mettur and transfer the same to the file of Family Court, Salem, to try along with F.C.O.P.No.543 of 2017 pending on its file.

For Petitioner : Mr.C.K.M.Appaji

For Respondent : Mr.S.T.P.Kuilmozhi

O R D E R

This petition is filed to withdraw H.M.O.P.No.111 of 2017 pending on the file of Sub Court, Mettur and transfer the same to the file of Family Court, Salem, to try along with F.C.O.P.No.543 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 09.03.2008 as per Hindu rites and customs. In the wedlock, a female child was born on 18.03.2009. The petitioner was driven out from the matrimonial home on many occasions by the respondent by demanding dowry. In the year 2012, due to torture made by the respondent, the petitioner left the matrimonial home. While so, the respondent married another lady and filed H.M.O.P.No.111 of 2017 on the file of Sub Court, Mettur, for divorce against the petitioner on the ground of cruelty and desertion. The petitioner filed F.C.O.P.No.543 of 2017 for restitution of conjugal rights on the file of Family Court, Salem, against the respondent.

3.According to the petitioner, she is residing along with her minor daughter in her parents home at Salem. The distance between Salem and Mettur is 50 kilometers and hence, it will be very difficult for her to travel such a long distance to attend the Court proceedings at Mettur. She has no independent income and she is depending on her parents for her day-to-day expenses. Her father died recently. Her daughter is studying IV standard at Sree Vidhya Mandhir, Salem. Further she has no

one to accompany her to attend the Court proceedings at Mettur. Unless both the petitions are heard together and decided jointly, there will be conflicting judgments. In the circumstances, the petitioner has come out with the present Tr.C.M.P. to transfer H.M.O.P.No.111 of 2017 pending on the file of Sub Court, Mettur, to the file of Family Court, Salem, to try along with F.C.O.P.No.543 of 2017 pending on its file.

4.The learned counsel for the respondent contended that there is a life threat to the respondent, if he goes to Salem to attend the Court proceedings. Further, in the Family Court, Salem, presence of respondent is mandatory for each and every hearing. Whereas presence of petitioner is not necessary for all the hearings before Sub Court, Mettur and she can appear only at the time of trial as and when required by the trial Court and she prayed for dismissal of the Transfer 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 has sought for transfer on the ground that she is finding difficult in attending the hearing before Sub Court, Mettur, as she has no sufficient means to maintain herself and her minor daughter and no one is there to accompany her to go to Mettur. The respondent is resisting the Transfer Petition on the ground that there is a life threat to him, if he goes to Salem to attend the Court proceedings. The said contention of the respondent is mere apprehension. The learned counsel for the respondent took time to file documents to prove that there is life threat to the respondent before the Court at Salem, but she has not filed any document to prove the same.

7.Considering the above contentions 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.

8.Accordingly, the Transfer Civil Miscellaneous Petition is ordered. The petition in H.M.O.P.No.111 of 2017 is ordered to be withdrawn from the file of Sub Court, Mettur and transferred to the file of Family Court, Salem, to be tried along with F.C.O.P.No.543 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, Mettur, is directed to transmit all the

records pertaining to H.M.O.P.No.111 of 2017 to the file of Family Court, Salem, 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

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To

1.The Subordinate Judge, Mettur.

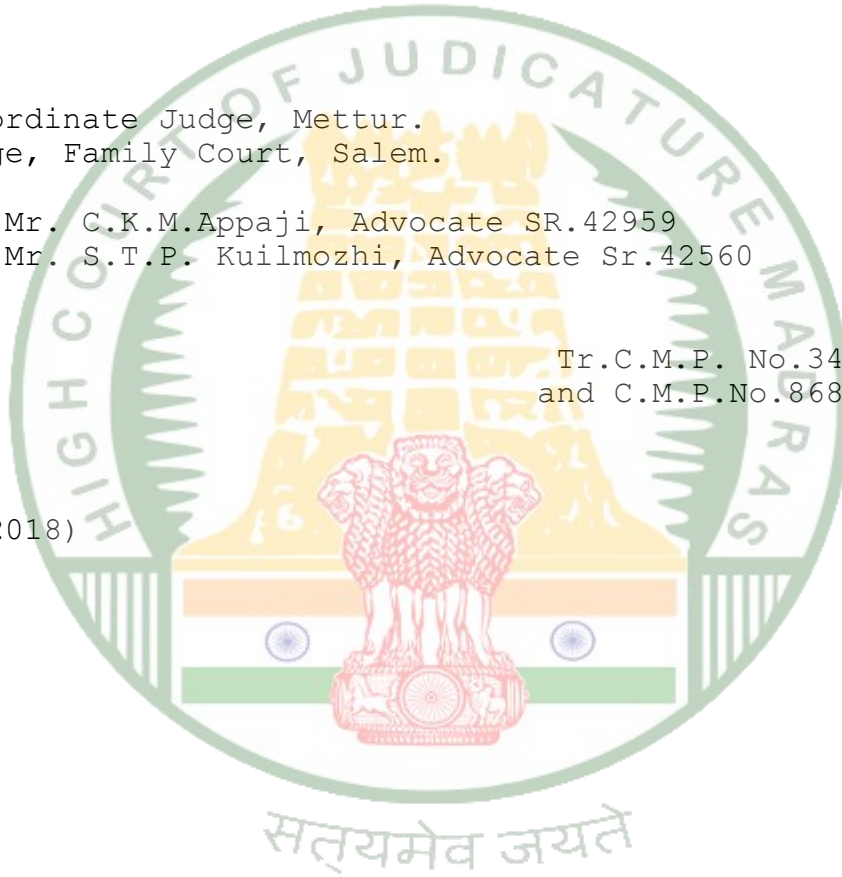
2.The Judge, Family Court, Salem.

+ 1 cc to Mr. C.K.M.Appaji, Advocate SR.42959

+ 1 cc to Mr. S.T.P. Kuilmozhi, Advocate Sr.42560

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SR(CO)
EU(09/08/2018)



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