

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2018

CORAM :

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Tr.C.M.P.No.349 of 2018
and C.M.P.No.9256 of 2018

Mageswari

... Petitioner/Respondent

Vs.

Rajkumar

... Respondent/Petitioner

Prayer:

Petition is filed under Section 24 of C.P.C., to withdraw H.M.O.P.No.150 of 2017 pending on the file of the Sub Court, Attur, Salem District and transfer the same to the file of the Family Court, Chengalpattu, to be tried along with F.C.O.P.No.66 of 2018 pending on its file.

For Petitioner : Dr.C.Ravichandran
for Mr.D.Venkateswaran

For Respondent : No Appearance

O R D E R

This petition is filed to withdraw H.M.O.P.No.150 of 2017 pending on the file of the Sub Court, Attur, Salem District and transfer the same to the file of the Family Court, Chengalpattu, to be tried along with F.C.O.P.No.66 of 2018 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 06.02.2012 as per Hindu Rites and Customs. In the wedlock, a female child was born. Due to the torture given by the respondent demanding dowry, the petitioner left the matrimonial home. The respondent filed H.M.O.P.No.150 of 2017 on the file of the Sub Court, Attur, Salem District for restitution of conjugal rights. The petitioner filed F.C.O.P.No.66 of 2018 on the file of the Family Court, Chengalpattu for divorce, against the respondent.

3.According to the petitioner, she is working in Sri Krishna College of Education near Padappai, Tambaram and residing at

Porur, Chennai along with minor child. Knowing fully well that the petitioner is working and residing at Chennai along with her younger brother, the respondent has filed H.M.O.P.No.150 of 2017 before the Sub Court at Attur, Salem District, giving her mother's address. The distance between Chennai and Chengalpattu is more than 55 kms and hence, it will be very difficult for her to travel from Chennai to Chengalpattu to attend 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.150 of 2017 pending on the file of the Sub Court, Attur, Salem District and transfer the same to the file of the Family Court, Chengalpattu, to be tried along with F.C.O.P.No.66 of 2018 pending on its file, in order to avoid conflicting decisions being rendered by two different Courts.

4.Heard the counsel for the petitioner 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.In the above petition, the petitioner has sworn to the affidavit that she is permanently residing in No.6/111, Oddar Street, Thandavarayapuram P.O., Attur Taluk, Salem District and has temporarily come to Chennai. In the body of the affidavit, she has stated that she is working and residing at Chennai. When this discrepancy was pointed out to the learned counsel for the petitioner, he took time to file documents to show that petitioner is working and residing at Padappai, Chennai and submitted that it is typographical mistake. Today, he has filed experience certificate given from the Sri Krishna College of Education stating that the petitioner is working in the said College in Chennai.

6.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.

7.Accordingly, the Transfer Civil Miscellaneous Petition is ordered. The petition in H.M.O.P.No.150 of 2017 is ordered to be withdrawn from the file of the Sub Court, Attur, Salem District and transferred to the file of the Family Court, Chengalpattu, to be tried along with F.C.O.P.No.66 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, Attur, Salem District is directed to transmit all the records pertaining to F.C.O.P.No.66 of 2018 to the file of the Family Court, Chengalpattu 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

//True Copy//

Sub Assistant Registrar

gsa

To

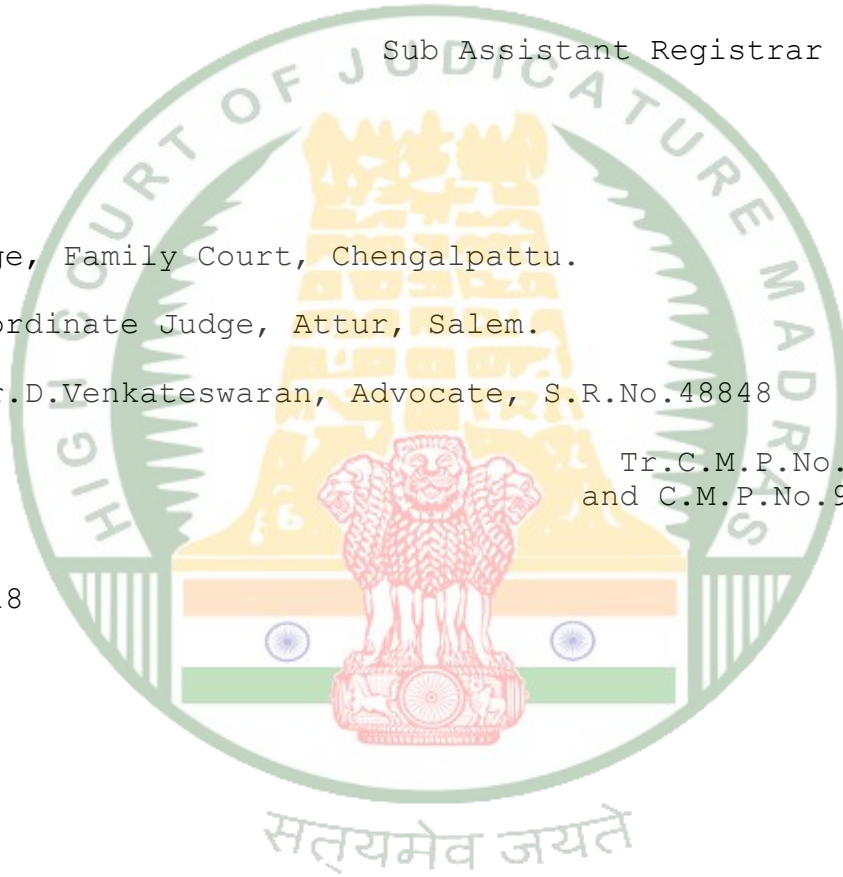
1.The Judge, Family Court, Chengalpattu.

2.The Subordinate Judge, Attur, Salem.

+1cc to Mr.D.Venkateswaran, Advocate, S.R.No.48848

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