

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Tr.C.M.P.Nos.353 and 354 of 2018
and C.M.P.Nos.9562 and 9563 of 2018

G.Padmapriya

.. Petitioner in
both Tr.C.M.Ps.

Vs.

K.Amudhasagar

.. Respondent in
both Tr.C.M.Ps.

PRAYER in Tr.C.M.P.No.353/2018: Petition filed under Section 24 of the Civil Procedure Code, to withdraw H.M.O.P.No.27 of 2018 pending on the file of the Sub Court, Udumalpet and transfer the same to the Sub Court, Harur, to be tried along with H.M.O.P.No.43 of 2018 pending on its file.

PRAYER in Tr.C.M.P.No.354/2018: Petition filed under Section 24 of the Civil Procedure Code, to withdraw G.W.O.P.No.38 of 2018 pending on the file of the Principal District Court, Tiruppur and transfer the same to the file of the Principal District Court, Dharmapuri.

For Petitioner : Mr.P.Valliappan

For Respondent : Ms.R.Gowri

C O M M O N O R D E R

Tr.C.M.P.No.353 of 2018 is filed to withdraw H.M.O.P.No.27 of 2018 pending on the file of the Sub Court, Udumalpet and transfer the same to the Sub Court, Harur, to be tried along with H.M.O.P.No.43 of 2018 pending on its file.

Tr.C.M.P.No.354 of 2018 is filed to withdraw G.W.O.P.No.38 of 2018 pending on the file of the Principal District Court, Tiruppur and transfer the same to the file of the Principal District Court, Dharmapuri.

2.The issues and the parties involved in both the Transfer Civil Miscellaneous Petitions are one and the same and therefore, they are disposed of by this common order.

3. In both the Transfer Civil Miscellaneous Petitions, the petitioner is wife and respondent is the husband. The marriage between the petitioner and respondent was conducted on 14.02.2013 as per Hindu rites and customs. In the wedlock, a female child was born on 06.11.2013 and a male child was born on 05.07.2016. Due to difference of opinion, the respondent has thrown out the petitioner and her minor daughter from the matrimonial home. While so, the respondent filed H.M.O.P.No.27 of 2018 before the Sub Court, Udumalpet, for divorce against the petitioner and respondent has also filed G.W.O.P.No.38 of 2018 before the Principal District Court at Tiruppur, for custody of the minor daughter. The petitioner filed H.M.O.P.No.43 of 2018 on the file of the Sub Court, Harur, for restitution of conjugal rights, against the respondent.

4. According to the petitioner, she is residing at Harur, Dharmapuri District, along with her aged parents and minor daughter. The distance between Harur and Udumalpet is more than 260 kilometers and being a lady, it will be very difficult for her to travel such a long distance to attend the Court proceedings at Udumalpet along with her minor daughter. She further stated that the distance between Harur and Tiruppur is more than 200 kilometers and hence, it will be very difficult for her to travel such a long distance to attend the Court proceedings before the Principal District Court, Tiruppur, wherein G.W.O.P.No.38 of 2018 filed by the respondent is pending. She has no one to accompany her to go to Udumalpet and Tiruppur to attend the Court proceedings for each and every hearing. In the circumstances, the petitioner has come out with the present two Transfer Civil Miscellaneous Petitions to transfer H.M.O.P.No.27 of 2018 pending on the file of the Sub Court, Udumalpet, to the Sub Court, Harur, to be tried along with H.M.O.P.No.43 of 2018 pending on its file and to transfer G.W.O.P.No.38 of 2018 pending on the file of the Principal District Court, Tiruppur, to the file of the Principal District Court, Dharmapuri respectively.

5. The learned counsel for the respondent contended that both the cases are pending before the Sub Court and Principal District Court and therefore, appearance of the petitioner is not necessary for all the hearings and she can represent through her advocate and prayed for dismissal of both the Transfer Petitions.

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

7. Considering the above contentions 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.The interest of the minor and residence of minor are the paramount consideration while considering the petition for custody of minor.

9.Accordingly, both the Transfer Civil Miscellaneous Petitions are ordered. The petition in H.M.O.P.No.27 of 2018 is ordered to be withdrawn from the file of the Sub Court, Udumalpet and transferred to the file of the Sub Court, Harur, to be tried along with H.M.O.P.No.43 of 2018 filed by the petitioner, in order to avoid multiplicity of proceedings and conflicting decisions being rendered by two different Courts. The learned Subordinate Judge, Udumalpet, is directed to transmit all the records pertaining to H.M.O.P.No.27 of 2018 to the file of the Sub Court, Harur, within a period of two weeks from the date of receipt of a copy of this order. Likewise, the petition in G.W.O.P.No.38 of 2018 is ordered to be withdrawn from the file of the Principal District Court, Tiruppur and transferred to the file of the Principal District Court, Dharmapuri. The learned Principal District Judge, Tiruppur, is directed to transmit all the records pertaining to G.W.O.P.No.38 of 2018 to the file of the Principal District Court, Dharmapuri, within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Judge, Harur.

2.The Subordinate Judge, Udumalpet.

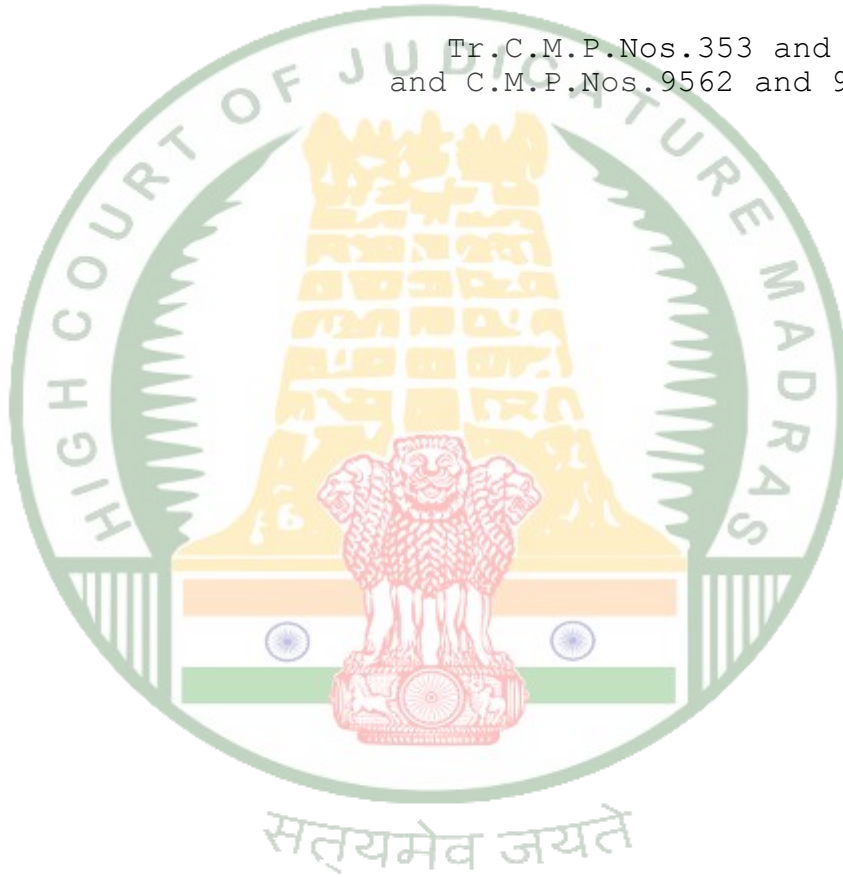
3.The Principal Judge, District Court
Dharmapuri.

4.The Principal Judge, District Court
Tiruppur.

+2cc to M/s.P.Valliappan, Advocate SR.NO.47858

CP(CO)
sm:29.8.2018

Tr.C.M.P.Nos.353 and 354 of 2018
and C.M.P.Nos.9562 and 9563 of 2018



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