

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 04.07.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Tr.C.M.P.No.359 of 2018
and C.M.P.No.9779 of 2018

Yuvarani

.. Petitioner

Vs.

Balasubramaniam

.. Respondent

PRAYER: This petition has been filed under Section 24 C.P.C to withdraw H.M.O.P.No.39 of 2017 pending on the file of the Sub Court, Perundurai and transfer the same to the file of the Family Court, Erode to be tried along with F.C.O.P.No.148 of 2017 pending on its file.

For Petitioner : Mr.K.S.Jeyaganeshan
For Respondent : No Appearance

O R D E R

This Petition has been filed to withdraw H.M.O.P.No.39 of 2017 pending on the file of the Sub Court, Perundurai and transfer the same to the file of the Family Court, Erode to be tried along with F.C.O.P.No.148 of 2017 pending on its file.

2.The petitioner is the wife and respondent is the husband. The marriage between petitioner and respondent was conducted on 28.03.2002 as per Hindu Rites and Customs. In the wedlock, two female children were born on 21.02.2003 and 26.05.2005. Due to difference of opinion, both the petitioner and respondent are living separately. While so, the petitioner filed F.C.O.P.No.148 of 2017 before the Family Court at Erode for divorce against the respondent. The respondent filed H.M.O.P.No.39 of 2017 before the Sub Court, Perundurai for restitution of conjugal rights.

3.According to the petitioner, to appear before Sub Court, Perundurai, from her residence, she has to travel in two buses and hence, it will be very difficult for her to attend each and every hearing. The respondent is residing only 13 kms away from the Family Court at Erode and it will not be difficult for him to attend the proceedings before the Family Court at Erode. The evidence, both oral and documentary to be let in and the parties are one and the same in both the cases. Hence, in order to avoid conflicting judgments being delivered by two different Courts, the petitioner is seeking to transfer H.M.O.P.No.39 of 2017 from

the file of the Sub Court, Perundurai to the file of the Family Court, Erode to be tried along with F.C.O.P.No.148 of 2017 pending on its file.

4.Heard the learned 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.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.

6.Accordingly, the Transfer Civil Miscellaneous Petition is ordered. The petition in H.M.O.P.No.39 of 2017 is ordered to be withdrawn from the file of the Sub Court, Perundurai and transferred to the file of the Family Court, Erode to be tried along with F.C.O.P.No.148 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, Perundurai is directed to transmit all the records pertaining to H.M.O.P.No.39 of 2017 to the file of the Family Court, Erode 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/-
Deputy Registrar

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

gsa

To

- 1.The Judge, Family Court, Erode.
- 2.The Subordinate Judge, Perundurai.

+1cc to Mr.K.S.Jeyaganeshan, Advocate, S.R.No.42962

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BM 25/07/2018