

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P. No.669 of 2015

and M.P.No.1 of 2015

Mercy Amala @ R.Arut Selvam ... Petitioner/Respondent

Vs.

A.Gnana Prakasam ... Respondent/Petitioner

Prayer:- Petition has been filed under Section 24 of C.P.C., to withdraw F.C.I.D.O.P.No.4 of 2015 pending on the file of the Family Court, Dharmapuri and transfer the same to the file of the Family Court, Salem to be tried along with I.D.O.P.No.17/2013.

For Petitioner : Mr.I.Abrar Md Abdullah
For Respondent : No Appearance

O R D E R

This petition is filed to withdraw F.C.I.D.O.P.No.4 of 2015 pending on the file of the Family Court, Dharmapuri and transfer the same to the file of the Family Court, Salem to be tried along with I.D.O.P.No.17/2013.

2.The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was solemnized on 29.10.2012 at Infant Jesus Cathedral, Salem as per Christian Rites and Customs. In the wedlock a male child was born on 10.08.2013. Due to dispute between both the petitioner and respondent, they are living separately. The petitioner filed I.D.O.P.No.17 of 2013 on the file of the Family Court, Salem for dissolution of marriage. Thereafter, the respondent filed F.C.I.D.O.P.No.4 of 2015 on the file of the Family Court, Dharmapuri for restitution of conjugal rights.

3.According to the petitioner, she is now residing with her parents at Salem. She is not having any independent income for maintaining herself and minor son. The distance between Salem and Dharmapuri is 120 kms. It is very difficult for her to travel such a long distance along with minor son. There is no

one to take care of her minor son and to accompany her to go to Dharmapuri to attend each and every hearing. In the circumstances, she has come out with the present Transfer Civil Miscellaneous Petition for transfer of F.C.I.D.O.P.No.4 of 2015 from the file of the Family Court, Dharmapuri to the file of the Family Court, Salem to be tried along with I.D.O.P.No.17 of 2013.

4. Heard the learned counsel for the petitioner and perused the materials available on record. Though notice was 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.It is well settled law that whenever the transfer application is filed in matrimonial disputes, the convenience of the wife shall be given preference, as held by 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]. Further as per the provisions of the Hindu Marriage Act, the place of the residence of wife must be taken into account.

6. Having regard to the submissions made by the learned counsel for the petitioner and the decisions of the Hon'ble Apex Court referred to above and the residence of the petitioner at Salem, the petition in F.C.I.D.O.P.No.4 of 2015 is ordered to be withdrawn from the file of the Family Court, Dharmapuri and transferred to the file of the Family Court, Salem to be tried along with I.D.O.P.No.17 of 2013 in the interest of justice, in order to avoid multiplicity of proceedings and conflicting judgments being delivered by two different Courts. The learned Family Court Judge, Dharmapuri, is directed to transmit all the records pertaining to F.C.I.D.O.P.No.4 of 2015 to the file of the Family Court, Salem, within a period of two weeks from the date of receipt of a copy of this order.

7.Accordingly, this Transfer Civil Miscellaneous petition is ordered. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-viii)

//True Copy//

Sub Assistant Registrar

gsa

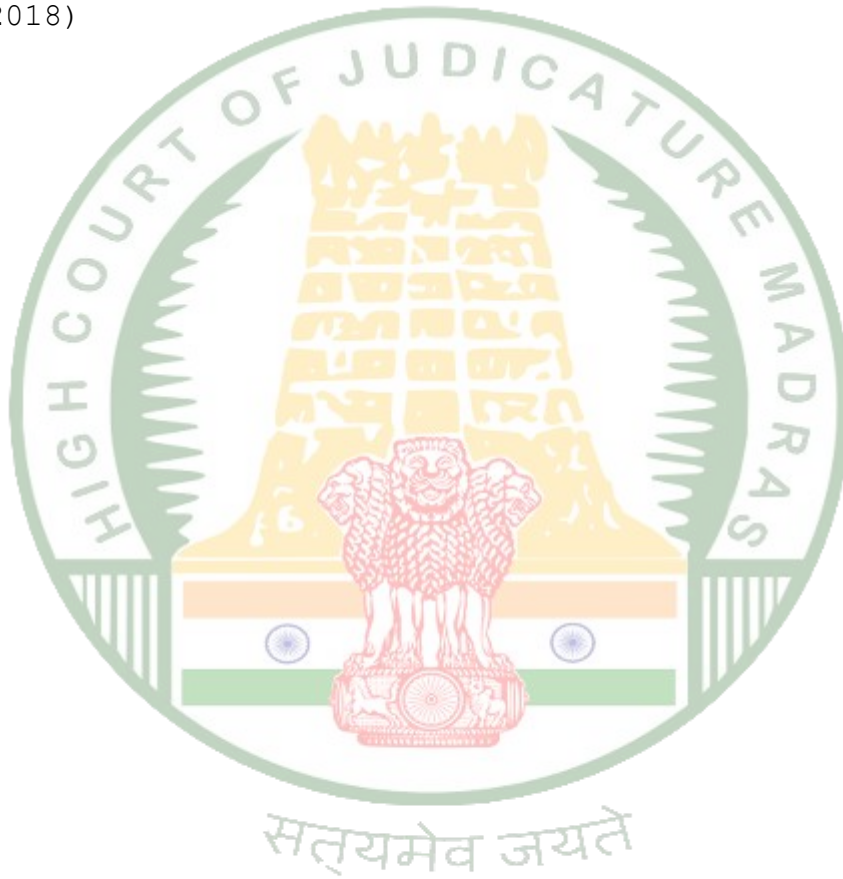
To

1.The Family Court Judge,
Salem.

2.The Family Court Judge,
Dharmapuri.

Tr.C.M.P. No.669 of 2015
and M.P.No.1 of 2015

sj (CO)
TR(27/04/2018)



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