

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P. No.376 of 2018
and C.M.P.No.10095 of 2018

Nadhiya

... Petitioner

Vs.

Ezhil Nilavu

... Respondent

Prayer:- Petition is filed under Section 24 of C.P.C., to withdraw F.C.O.P.No.42 of 2018 pending on the file of Family Court, Ariyalur and transfer the same to the file of V Additional Family Court, Chennai to try along with H.M.O.P.No.2083 of 2018.

(Amended vide Court order dated 17.07.2018 made in C.M.P.No.12328 and 12329 of 2018 in Tr.C.M.P.No.376 of 2018)

For Petitioner : Mr.N.Selvarajan
For Respondent : No appearance

O R D E R

This petition is filed to withdraw F.C.O.P.No.42 of 2018 pending on the file of Family Court, Ariyalur and transfer the same to the file of V Additional Family Court, Chennai, to try along with H.M.O.P.No.2083 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 25.02.2010 as per Hindu rites and customs. Out of the wedlock, two female children was born to them. After marriage, both the petitioner and respondent were living together in the matrimonial home at Chennai. Thereafter, they shifted their residence to the native village of the respondent at Periakurichi. Due to torture faced by the petitioner in the hands of respondent and his mother she left the matrimonial home and came to her parental home at Chennai. The respondent filed F.C.O.P.No.42 of 2018 on the file of the Family Court, Ariyalur, for divorce on the ground of cruelty & desertion. The petitioner also filed H.M.O.P.No.2083 of 2018 before the V Additional Family Court, Chennai, against the respondent for restitution of conjugal rights.

3.According to the petitioner, she is living with her aged mother along with two minor children at Chennai. The distance between Chennai and Ariyalur is 400 kilometers and hence being a lady, it is very difficult for her to travel such a long distance to attend the Court proceedings at

Ariyalur. Further, she is not having any independent income for her day-to-day expenses, including travelling expenses. In the circumstances, the petitioner has come out with the present Tr.C.M.P. to transfer F.C.O.P.No.42 of 2018 pending on the file of Family Court, Ariyalur, to the file of V Additional Family Court, Chennai, to try along with H.M.O.P.No.2083 of 2018 pending on its file.

4.Heard the learned counsel for the petitioner and perused the materials available on record. Though the respondent entered appearance through advocate, today there is no representation on behalf of the respondent.

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 F.C.O.P.No.42 of 2018 is ordered to be withdrawn from the file of Family Court, Ariyalur and transferred to the file of the V Additional Family Court, Chennai, to be tried along with H.M.O.P.No.2083 of 2018 filed by the petitioner, in order to avoid multiplicity of proceedings and conflicting judgments being delivered by two different Courts. The learned Family court Judge, Ariyalur is directed to transmit all the records pertaining to F.C.O.P.No.42 of 2018 to the file of the V Additional Family Court, Chennai, 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 (CS VII)

//True copy//

Sub Assistant Registrar

arr
To

1.The Judge, Family Court, Ariyalur

2.The Judge, V Additional Family Court, Chennai

+1cc to Mr.N.Selvarajan, Advocate SR.NO.49577

+1cc to Mr.N.Selvarajan, Advocate SR.NO.49577 6.9.2018

sm:27.8.2018