

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.08.2018

PRONOUNCED ON : 27.08.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

Transfer CMP.No. 379 of 2018

and

CMP.No.10145 of 2018

Umadevi

...

Petitioner

Vs.

Vellairaj

...

Respondent

Prayer :- Transfer Civil Miscellaneous Petition has been filed under Section 24 of CPC to withdraw the case in HMOP No.29 of 2018 pending on the file of the Sub-Court, Palani and transfer the same to the file of the Sub-Court, Udumalpet or anyother appropriate Court.

For Petitioner : Mr.N.Umapathi

For Respondent : Ms.R.Shase

ORDER

The petitioner is the wife. The respondent is the husband.

2.The marital life between the parties is not cordial. From the materials placed on record, it is seen that the petitioner has filed a divorce proceeding against the respondent in HMOP No.178 of 2017 and the same is pending on the file of the Sub-Court, Udumalpet. It is also found that O.S.No.360 of 2017 has been laid by the children represented by the petitioner for maintenance and the same is pending on the file of the Sub-Court, Udumalpet. It is also seen that the respondent has laid a civil suit in O.S.No.152 of 2018 on the file of the III Additional District Court, Dharapuram against the petitioner. In addition to that, it is also noted that the respondent has levied HMOP No.29 of 2018 on the file of the Sub-Court, Palani against the petitioner for restitution of conjugal rights.

3.In the light of the abovesaid position that the various proceedings abovestated between the parties are pending in different Courts, it is the case of the petitioner that

inasmuch as she has to take care of the children and also unable to travel to Palani for every occasion to attend the proceeding pending at Palani Court, accordingly, has come forward with the present transfer petition seeking to transfer the proceeding pending on the file of the Sub-Court Palani to Sub-Court, Udumalpet or any other appropriate Court for disposal according to law.

4.The respondent has resisted the petitioner's request by contending that on account of misunderstanding between the parties in their marital life, the respondent is unable to carry on his business activities and it is alleged that the petitioner along with her father and brother entered into the business premises of the respondent and threatened him and also tried to assault him and in this connection , he has lodged a complaint before the Madathukulam Police Station and as the same had not been pursued lawfully by the police authorities, it is stated that the respondent had been necessitated to lay the criminal Original Petition No.21027 of 2017 and the same had been allowed by the High Court and consequently, the complaint lodged by the respondent has been registered by the police and thereafter also, according to the respondent, the police had filed a closure report and he has assailed the same by preferring a protest petition before the concerned Magistrate Court.

5.It is thus stated by the respondent that the petitioner and her relatives abovestated have been continuously harassing the respondent and in such view of the matter, it is contended by the respondent that the request of the petitioner to transfer the proceeding to Sub-Court, Udumalpet should not be countenanced as the same would be a risk to his life and body and accordingly, prayed that in the event of the Court inclining to transfer the proceeding from Palani Court, requested that the same be transferred to someother Court other than Udumalpet and accordingly, prayed for the disposal of the transfer petition.

6.As above noted, various proceedings are pending between the parties. Apropos of the proceedings as regards the marital issues pending between the parties, one is pending on the file of the Sub-Court, Udumalpet and another is pending on the file of the Sub-Court, Palani. The petitioner seeks to transfer the proceedings at Palani Court to the file of the Udumalpet Court. Per Contra, the respondent apprehending danger to his life and body prays that the proceeding may be transferred to someother Court other than Udumalpetr Court.

7.Consdiering the abovesaid nature of the abovesaid proceedings, it is found that the issues involved in the abovesaid proceedings between the parties are found to be similar and in such view of the matter, common adjudication of the said proceedings by one and the same Court would be useful and beneficial to both the parties as by way of the common

trial by one and the same Court, the parties would be required to adduce common evidence in both the proceedings and further, if the abovesaid proceedings are determined by one and the same Court, the same would avoid conflict of decisions. Accordingly, it is seen that the abovesaid two proceedings should be jointly tried by one and the same Court.

8.The respondent has made out a prima facie case as against the apprehension to his life and body by the petitioner and her men. In this connection, as abovenoted only after the intervention of the High Court, the complaint given by the respondent had come to be registered by the police. Be that as it may, the respondent's apprehension to his life and body cannot be easily discarded. The same is also to be taken into account while considering the transfer request of the petitioner.

9.The petitioner's counsel in support of his contentions placed reliance upon the decisions reported in 2016 SCC OnLine Madras 14176 (R.Subha Priya Vs. J.Yuvaraj) and (2006) 1 SCC (Cri) 341 (Soma Choudhury Vs. Gourab Choudhury). Per contra, the respondent's counsel, in support of her contentions, placed reliance upon the decision reported in (2006) 9 SCC 197 (Anindita Das Vs. Srijit Das). The principles of law outlined in the above said decisions are taken into consideration and followed as applicable to the case at hand.

10.Considering the nature of the proceedings between the parties and also the apprehension in the minds of both the parties as against each other and the convenience of both the parties and in the interest of justice, I am of the opinion that the proceedings pending on the file of the Sub-Court, Udumalpet and the proceeding pending on the file of the Sub-Court, Palani should be transferred to the file of the Principal Sub-Court, Coimbatore for joint trial and disposal according to law.

11. For the reasons aforesaid, HMOP No.178 of 2017 and O.S.No.360 of 2017 pending on the file of the Sub-Court, Udumalpet and HMOP No.29 of 2018 pending on the file of the Sub-Court, Palani, are withdrawn from the file of the Sub-Court, Udumalpet and Palani respectively and all the abovesaid three proceedings are transferred to the file of the Principal Sub-Court, Coimbatore for disposal according to law.

Accordingly, the Transfer Civil Miscellaneous petition is disposed of. Consequently, connected CMP No.10145 of 2018 is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

- 1.The Sub-Court, Palani.
- 2.The Sub-Court, Udumalpet.

+1cc to Mr.N.Umapathi , Advocate SR.No. 58684
+1cc to Mr.M.GURUPRASAD , Advocate SR.No. 59396

made

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and
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ASK(11/09/2018)



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