

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P. No.383 of 2018

and C.M.P.No.10174 of 2018

Swarna Bharathi

... Petitioner

Vs.

D.Karthik

... Respondent

Prayer:- Petition is filed under Section 24 of C.P.C., to withdraw H.M.O.P.No.514 of 2017 pending on the file of the Sub Court, Poonamallee and transfer the same to the file of the Family Court, Salem, to try along with F.C.O.P.No.282 of 2017 pending on its file.

For Petitioner : Mr.V.Sekar

For Respondent : Mr.S.L.Venkatesan

O R D E R

This petition is filed to withdraw H.M.O.P.No.514 of 2017 pending on the file of the Sub Court, Poonamallee and transfer the same to the file of the Family Court, Salem, to try along with F.C.O.P.No.282 of 2017 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 19.10.2016 as per Hindu rites and customs. After marriage, both the petitioner and respondent were living in the matrimonial home at Avadi in Chennai. Due to torture and ill-treatment by the respondent and his parents, the petitioner left the matrimonial home and filed F.C.O.P.No.282 of 2017 on the file of the Family Court, Salem, for declaration of the marriage between the petitioner and respondent as null and void and D.V.O.P.No.58 of 2017 on the file of the Additional Mahila Court (Judicial Magistrate Court), Salem and the same are pending. The respondent filed H.M.O.P.No.514 of 2017 on the file of the Sub Court, Poonamallee, for restitution of conjugal rights, against the petitioner.

3.According to the petitioner, she is residing at Salem along with her aged mother. The distance between Salem and Poonamallee is more than 320 kilometers and being a lady, it

will be very difficult for her to travel such a long distance to attend the Court proceedings at Poonamallee. Further, she has no one to accompany her to go to Poonamallee. Unless both the H.M.O.P. and F.C.O.P. are heard together and decided jointly, there will be conflicting judgments. In the circumstances, the petitioner has come out with the present Tr.C.M.P. to transfer H.M.O.P.No.514 of 2017 pending on the file of the Sub Court, Poonamallee, to the file of the Family Court, Salem, to try along with F.C.O.P.No.282 of 2017 pending on its file.

4.The learned counsel for the respondent filed counter and contended that the respondent is suffering from Asthma and hence, it will be very difficult for him to attend the Court proceedings at Salem. Further, in the Family Court, presence of spouse is mandatory for each and every hearing and prayed for dismissal of the transfer petition.

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

6.Considering the above contention of the learned counsel for the petitioner as well as the 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.

7.Accordingly, the Transfer Civil Miscellaneous Petition is ordered. The petition in H.M.O.P.No.514 of 2017 is ordered to be withdrawn from the file of the Sub Court, Poonamallee and transferred to the file of the Family Court, Salem, to be tried along with F.C.O.P.No.282 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, Poonamallee, is directed to transmit all the records pertaining to H.M.O.P.No.514 of 2017 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. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge, Poonamallee.

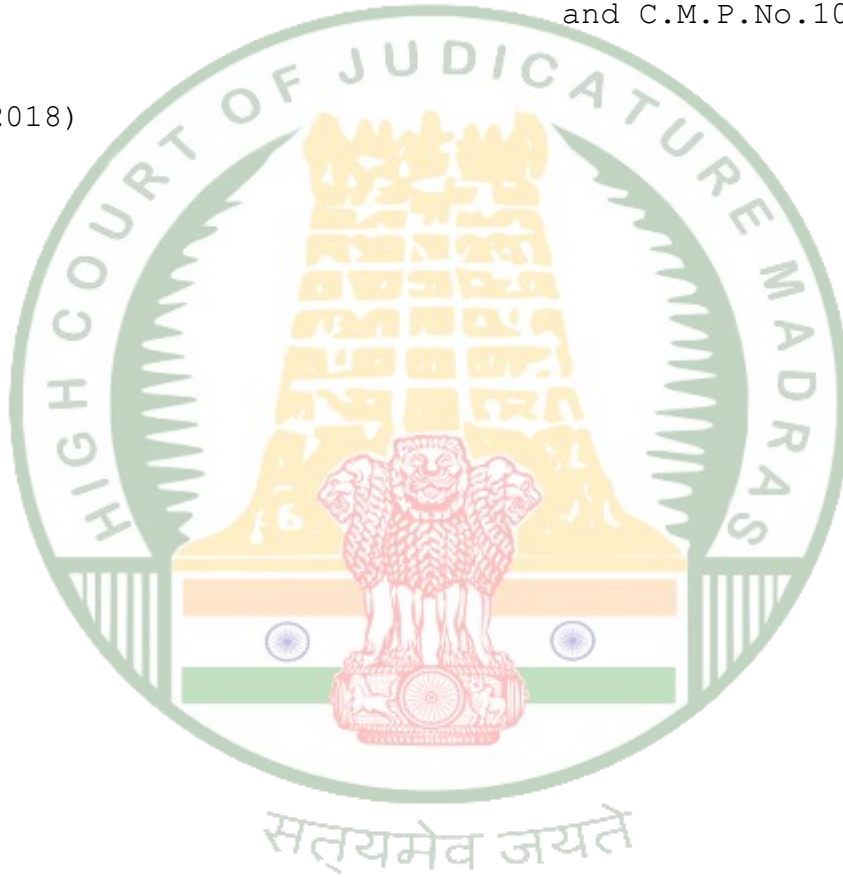
2.The Judge, Family Court, Salem.

+1cc to Mr.S.L.VENKATESAN, Advocate, S.R.No.47747

+1cc to Mr.V.SEKAR, Advocate, S.R.No. 48260

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BS (CO)
TR(07/08/2018)



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