

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P.No.390 of 2018

and C.M.P.No.10337 of 2018

Padmapriya

... Petitioner

Vs.

Gokulamani

... Respondent

Prayer: Petition is filed under Section 24 of C.P.C., to withdraw H.M.O.P.No.70 of 2018 pending on the file of the Sub Court, Nagapattinam and transfer the same to the file of the Family Court, Chennai.

For Petitioner : Mr.R.Muthukumar

For Respondent : Mr.M.Thamizhavel

O R D E R

This petition is filed to withdraw H.M.O.P.No.70 of 2018 pending on the file of the Sub Court, Nagapattinam and transfer the same to the file of the Family Court, Chennai.

2.The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was conducted on 21.08.2015 as per Hindu Rites and Customs. Due to dispute, the petitioner was thrown out from the matrimonial home. The petitioner gave birth to a female child on 19.10.2017. Even after giving information to the respondent, he did not come and see the child. While so, the respondent filed H.M.O.P.No.70 of 2018 on the file of the Sub Court, Nagapattinam for Restitution of Conjugal Rights, making false allegations against the petitioner.

3.The learned Counsel for the petitioner submitted that the petitioner is not having father and mother and she is residing at Chennai along with her 8 months old child under the care of her elder brother, who is the sole breadwinner of the family. The distance between Chennai and Nagapattinam is more than 318 kms and hence, it will be very difficult for her to travel from Chennai to Nagapattinam to attend each and every hearing along

with the minor child. Further, she is not having any independent income to maintain herself and is depending on her elder brother. In the circumstances, she has filed the present Transfer Civil Miscellaneous Petition to transfer H.M.O.P.No.70 of 2018 from the file of the Sub Court, Nagapattinam to the file of the Family Court at Chennai.

4.The learned counsel for the respondent submitted that H.M.O.P.No.70 of 2018 is only pending before the Sub Court at Nagapattinam and the petitioner can be represented through the Advocate. The respondent is affected by polio and is handicapped person and it will be very difficult for him to travel from Nagapattinam to Chennai, if H.M.O.P.No.70 of 2018 is transferred to the Family Court, Chennai, where he has to appear for all the hearings and prayed for dismissal of the Transfer Civil Miscellaneous Petition.

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

6.The petitioner is at present residing at Chennai under the care and custody of her elder brother along with minor child. She has stated that she has no independent income and is depending upon the income of her elder brother for maintenance of herself and minor child. It is not the case of the respondent that the petitioner is gainfully employed and has sufficient means to travel to Nagapattinam to attend the hearing. The contention of the learned counsel for the respondent is that the respondent is affected by polio and it will be very difficult for him to attend every hearing in Family Court at Chennai. The learned counsel for the respondent has not produced any documents to show that respondent is affected by polio to such an extent that he cannot travel from Nagapattinam to Chennai.

7.Considering the fact that respondent is having minor child as well as the provisions of Hindu Marriage Act, where the residence of the wife must be given preference and the judgments of the Hon'ble Apex court 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.

8.Accordingly, the Transfer Civil Miscellaneous Petition is ordered. The petition in H.M.O.P.No.70 of 2018 is ordered to be withdrawn from the file of the Sub Court, Nagapattinam and transferred to the file of the Family Court, Chennai. The learned Subordinate Judge, Nagapattinam is directed to transmit all the records pertaining to H.M.O.P.No.70 of 2018 to the file of the Family Court, Chennai within a period of two weeks from

the date of receipt of a copy of this order. The respondent is permitted to appear before the Family Court through an Advocate and he can appear in person at the time of trial or as and when so directed by the learned Judge, Family Court, Chennai. The appearance of the respondent is dispensed with. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Subordinate Judge, Nagapattinam.

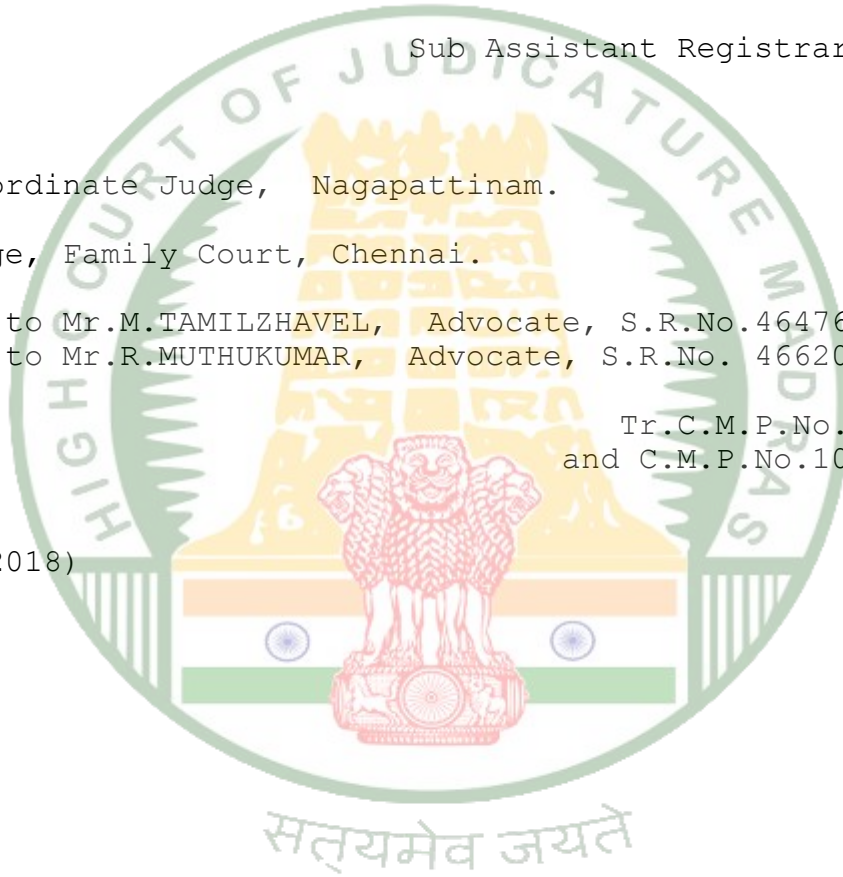
2.The Judge, Family Court, Chennai.

+1cc to Mr.M.TAMILZHAVEL, Advocate, S.R.No.46476

+1cc to Mr.R.MUTHUKUMAR, Advocate, S.R.No. 46620

Tr.C.M.P.No.390 of 2018
and C.M.P.No.10337 of 2018

SV (CO)
TR(29/08/2018)



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