

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P. No.413 of 2018
and CMP.No.10832 of 2018

P.Divya

... Petitioner

Vs.

R.Malarmannan

... Respondent

Prayer:- Petition is filed under Section 24 of C.P.C., to withdraw F.C.H.M.O.P.No.129 of 2018 pending on the file of Family Court, (District Judge cadre), Dharmapuri and transfer the same to the file of Subordinate Court, Tambaram, Kancheepuram District, to be tried along with H.M.O.P.No.369 of 2018 pending on its file.

For Petitioner : Mr.S.Shanmuga Sundaram
For Respondent : No appearance

O R D E R

This petition is filed to withdraw F.C.H.M.O.P.No.129 of 2018 pending on the file of Family Court, (District Judge Cadre), Dharmapuri and transfer the same to the file of Subordinate Court, Tambaram, Kancheepuram District, to be tried along with H.M.O.P.No.369 of 2018.

2.The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was conducted on 16.03.2011 as per Hindu rites and customs. After marriage, both the petitioner and respondent were living together in Chennai. In the wedlock, a male child was born to them and he is now in the custody of the respondent's parents. Due to torture by the respondent and his family members, the petitioner left the matrimonial home and started living with her parents. The respondent filed F.C.H.M.O.P.No.129 of 2018 for restitution of conjugal rights before the Family Court, (District Judge Cadre), Dharmapuri. The petitioner filed H.M.O.P.No.369 of 2018 before the Sub Court, Tambaram, for divorce on the ground of cruelty.

3.According to the petitioner, she is residing at Chennai along with her aged parents. The distance between Chennai and Dharmapuri is more than 350 kilometers and hence, it is very difficult for her to travel such a long distance to attend the court proceedings. Further, the respondent is working and

residing in Chennai and only in order to harass the petitioner, he has filed the F.C.H.M.O.P. In the circumstances, the petitioner has come out with the present Tr.C.M.P. to transfer F.C.H.M.O.P.No.129 of 2018 pending on the file of Family Court (District Judge Cadre), Dharmapuri to the file of Sub Court, Tambaram, to try along with H.M.O.P.No.369 of 2018 pending on its file in order to avoid conflicting decisions being rendered by two different Courts.

4.Heard the learned counsel for the petitioner and perused the materials available on record. Though the notice was served on the respondent and his name printed in the cause list, 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.H.M.O.P.No.129 of 2018 is ordered to be withdrawn from the file of Family Court, Dharmapuri and transferred to the file of Sub Court, Tambaram, to be tried along with H.M.O.P.No.369 of 2018 filed by the petitioner in order to avoid multiplicity of proceedings and conflicting judgments being delivered by two different Courts. The learned Judge, Family Court, Dharmapuri, is directed to transmit all the records pertaining to F.C.H.M.O.P.No.129 of 2018 to the file of Sub Court, Tambaram, 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

To

- 1.The Judge, Family Court, Dharmapuri
- 2.The Subordinate Judge, Tambaram.

+1cc to Mr.S.Shanmugasundaram, Advocate SR.No.52110

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