

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P. No.88 of 2018
and C.M.P.No.2510 of 2018

M.Prabha

... Petitioner

Vs.

Elangovan

... Respondent

Prayer: Petition is filed under Section 24 of C.P.C., to withdraw H.M.O.P.No.293 of 2016 pending on the file of the III Sub Court, Madurai (Camp Court at Usulampatti) and transfer the same to the file of the Family Court at Chennai.

For Petitioner : Mr.C.N.Ehoma Saviour

For Respondent : Mr.Sebastian
for Mr.C.K.M.Appaji

O R D E R

This petition is filed to withdraw H.M.O.P.No.293 of 2016 pending on the file of the III Sub Court, Madurai (Camp Court at Usulampatti) and transfer the same to the file of the Family Court at Chennai.

2.The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was conducted on 29.11.2009 as per Hindu Rites and Customs. In the wedlock, a male child was born physically handicapped on 11.11.2011. When the son was about 4 years, the respondent did not take any steps to get the child admitted in a School. The petitioner borrowed money and got admission for the child at Sree Shankara Vidyalaya, Thiruvottiyur, Chennai in the year 2015-2016. While so, the respondent left the matrimonial home and stayed with his parents at Usulampatti.

2(a).On 13.07.2016, the respondent came to the petitioner's rented house and brutally beaten her and threatened to kidnap the child from School. Hence, she lodged a complaint before the Inspector of Police, H8 Thiruvottiyur Police Station in CSR No.217/2016. The petitioner also filed D.V.C.No.11 of 2016 under Domestic Violence Act and the same is pending before the Judicial Magistrate Court, Thiruvottiyur. To escape from the Criminal case, the respondent has filed H.M.O.P.No.293 of 2016 before the III Sub Court, Madurai (Camp Court, Usulampatti).

3. According to the petitioner, she is now residing at Thiruvottiyur, Chennai. The distance between Thiruvottiyur and Madurai is more than 500 kms. Since the minor son is 7 years and he is studying I standard in C.S.I St.Thomas Nursery & Primary School, T.H.Road, Thiruvottiyur, Chennai, it will be very difficult for the petitioner to travel such a long distance to attend each and every hearing along with the physically handicapped minor son. In the said circumstances, she has filed the present Transfer Civil Miscellaneous Petition to transfer H.M.O.P.No.293 of 2016 from the file of the III Sub Court, Madurai (Camp Court at Usulampatti) to the Family Court at Chennai.

4. The learned counsel for the respondent submitted that H.M.O.P.No.293 of 2016 is pending only before the III Sub Court at Madurai (Camp Court, Usulampatti) and the petitioner need not attend each and every hearing. She can represent the case through Advocate. If H.M.O.P.No.293 of 2016 is transferred to the file of the Family Court at Chennai, the respondent will be put to hardship and prayed for dismissal of the Transfer Civil Miscellaneous 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 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.293 of 2016 is ordered to be withdrawn from the file of the III Sub Court, Madurai (Camp Court at Usulampatti) and transferred to the file of the Family Court, Chennai. The learned Judge, III Sub Court, Madurai (Camp Court at Usulampatti) is directed to transmit all the records pertaining to H.M.O.P.No.293 of 2016 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. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS IV)

//True copy//

Sub Assistant Registrar

gsa

To

1.The III Subordinate Judge, Madurai
(Camp Court at Usulampatti).

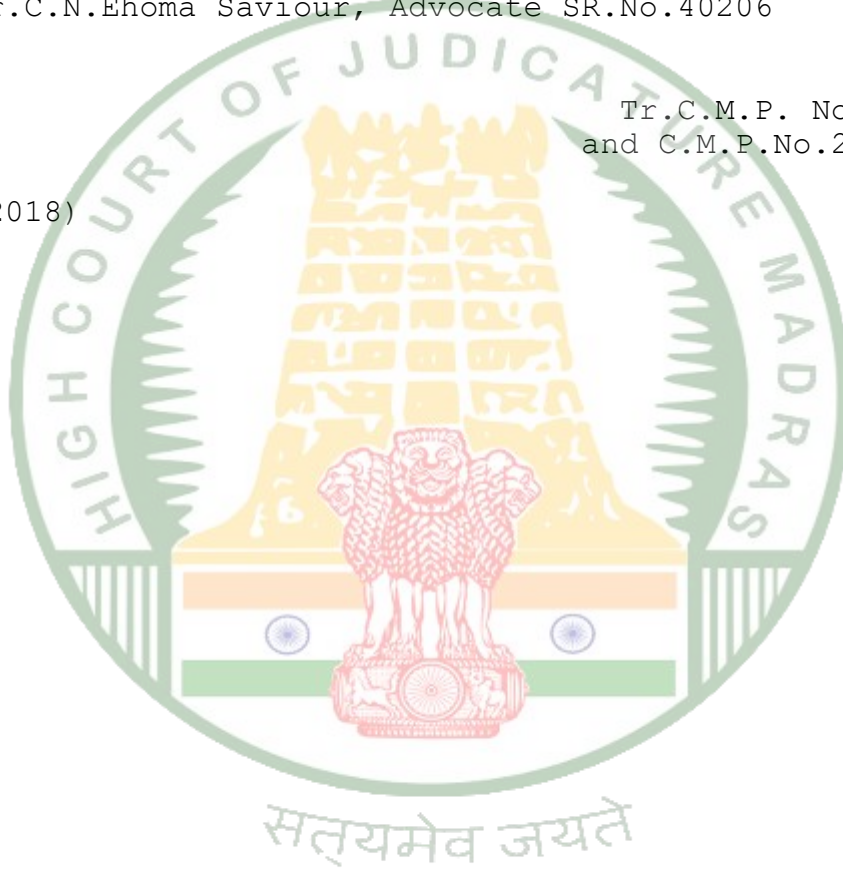
2.The Judge, Family Court, Chennai.

+1cc to Mr.C.K.M.Appaji, Advocate SR.No.40462

+1cc to Mr.C.N.Ehoma Saviour, Advocate SR.No.40206

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BS (CO)
GN(16/07/2018)



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