

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 03.12.2018

JUDGMENT PRONOUNCED ON : 13.12.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Tr.C.M.P.No.108 of 2018
and C.M.P.No.3118 of 2018

D.Lakshmipriya ... Petitioner/Respondent

versus

Rajeswaran Ganesan ... Respondent /Petitioner

Prayer: Petition is filed under Section 24 of C.P.C., to withdraw H.M.O.P.No.246 of 2017 pending on the file of the Sub Court, Theni and transfer the same to the file of the Sub Court, Gobichettipalayam.

For Petitioner : Mr.K.Mukund Rao

For Respondent : Mr.Venkatesh Kumar
for Mr.N.R.P.Ayyanar
Mr.L.Santhosh Kumar

O R D E R

This Transfer Civil Miscellaneous Petition has been filed to withdraw H.M.O.P.No.246 of 2017 pending on the file of the Sub Court, Theni and transfer the same to the file of the Sub Court, Gobichettipalayam.

2. The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was solemnized on 03.02.2004 at Muthu Mahal, Gobichettipalayam, as per Hindu rites, rituals and customs. After the marriage, both the petitioner and respondent were started to live in Gobichettipalayam and thereafter, both of them left India to Ireland, wherein the respondent was working. After some time from the date of marriage, difference of opinion arose between the petitioner and respondent and hence, the petitioner returned to India and living with her parents at Gobichettipalayam. In the meantime, the respondent filed a petition before the Sub Court, Theni, against the petitioner, for annulling the

marriage. The said petition is now pending before the Sub Court, Theni as H.M.O.P.No.246 of 2017. In the said petition, the respondent made various allegations against the petitioner.

3. According to the petitioner, she is residing at Gobichettypalayam along with her parents. The distance between her residence and Theni is more than 230 kms and being a lady, it is very difficult for her to go to Theni to attend the Court proceedings. Further, she is not having any independent income and she is depending on her parents for her day-to-day expenses and travelling expenses. In the said circumstances, the petitioner has come out with the present Transfer Civil Miscellaneous Petition for the relief stated earlier in the first paragraph of this order.

4. Resisting the claim made by the petitioner, the respondent filed a counter affidavit stating that, due to the attempt made by the elderly persons, the dispute between the petitioner and respondent was settled before the Mega Lok Adalat and the award copy was also forwarded to the Sub Court, Theni. Further, he stated that in the Sub Court, Theni, both the petitioner and respondent were examined as P.W.1 and R.W.1 respectively. In the above circumstances, transferring the proceedings from Theni to Gobichettypalayam will create much prejudice to the respondent.

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

6. As per the enclosures found in the typed set of papers filed by the respondent, it appears that, on 09.02.2018 itself the petitioner and respondent filed a joint memo before the Lok Adalat for settling the dispute having by them. Further, both of them were examined in the trial Court as P.W.1 and R.W.1 respectively and during the time of giving evidence, the petitioner filed a proof affidavit stating several allegations against the respondent, however finally he gave consent for allowing the petition filed by the respondent and thereafter, the petitioner approached this Court for transferring the said proceedings from the Sub Court, Theni to the Sub Court, Gobichettypalayam.

7. Accordingly, on culling out the entire circumstances, it discloses that something was hidden by the petitioner as well as by the respondent. However, in order to decide the issue involved in this case, it is relevant to see the judgments of our Honourable Apex Court in Arti Rani @ Pinki Devi and another Vs. Dharmendra Kumar Gupta reported in 2008 (9) SCC 353 and in Sumita Singh Vs. Kumar Sanjay and another reported in AIR 2002 SC 396, wherein the Hon'ble Apex Court has

held that 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 for deciding the issue involved in this petition. Since the respondent is residing in foreign country attending the Court proceedings in Gobichettypalayam is not difficult for him, thereby, I am of the considered opinion that allowing the prayer sought for by the petitioner will not cause prejudice to the respondent.

8. Accordingly, the Transfer Civil Miscellaneous Petition is ordered. The petition in H.M.O.P.No.246 of 2017 is ordered to be withdrawn from the file of the Sub Court, Theni and transferred to the file of the Sub Court, Gobichettypalayam. The Subordinate Judge, Theni, is directed to transmit all the records pertaining to H.M.O.P.No.246 of 2017 to the file of the Sub Court, Gobichettypalayam, within a period of two weeks from the date of receipt of a copy of this order. On receipt of records, the learned Subordinate Judge, Gobichettypalayam, is directed to dispose of the case as expeditiously as possible. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sri

To

1.The Subordinate Judge, Theni.

2.The Subordinate Judge, Gobichettypalayam.

+1cc to Mr.K.Mukund Rao, Advocate, S.R.No. 86352

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Tr.C.M.P.No.108 of 2018

GJ(CO)
GN(08/01/2019)