

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.09.2018

PRONOUNCED ON : 28/09/2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

Transfer CMP.Nos.476, 511 & 534 of 2018

K.Pavithran ... Petitioner in
Tr.CMP.Nos.476 & 511 of 2018
and respondent in
Tr.CMP.No.534 of 2018
Vs.

K.S.Sindhu ... Respondent in
Tr.CMP.Nos.476 & 511 of 2018
and petitioner in
Tr.CMP.No.534 of 2018

Prayer in Tr.CMP.No.476 of 2018 :- Transfer Civil Miscellaneous Petition has been filed under Section 24 of CPC to withdraw the case pending in G.W.O.P.No.3 of 2018 on the file of the Family Court, Erode and transfer the same to the Principal District Court, Tirupur or any other Court out of the Erode District as this Hon'ble Court feels proper and justified.

Prayer in Tr.CMP.No.511 of 2018 :- Transfer Civil Miscellaneous Petition has been filed under Section 24 of CPC to withdraw the case pending in HMOP.No.189 of 2018 on the file of the Family Court, Erode and transfer the same to the file of the Principal Sub-Court, Tirupur for a joint trial with HMOP No.84 of 2018.

Prayer in Tr.CMP.No.534 of 2018 :- Transfer Civil Miscellaneous Petition has been filed under Section 24 of CPC to withdraw HMOP No.84 of 2018 on the file of the learned Sub Court, Tiruppur and to transfer the same to the Family Court at Erode to try along with HMOP No.189 of 2018 and GWOP No.3 of 2018.

For Petitioner in : Mr.P.M.Duraiswamy
Tr.CMP.Nos.476 & 511 of 2018
and respondent in
Tr.CMP.No.534 of 2018

For Respondent : Mr.N.Manokaran
Tr.CMP.Nos.476 & 511 of 2018
and petitioner in
Tr.CMP.No.534 of 2018

COMMON ORDER

The husband is the petitioner in Transfer CMP Nos.476 of 2018 and 511 of 2018 and the wife is the petitioner in Transfer CMP No.534 of 2018.

2.All is not well qua the marital life of the parties. Resultantly, it is found that the husband has laid HMOP No.84 of 2018 against the wife for divorce and the same is pending on the file of the Sub-Court Tiruppur. It is also seen that the wife has filed HMOP No.189 of 2018 against the husband for restitution of conjugal rights and the same is pending on the file of the Family Court, Erode. Furthermore, it is also noted that the wife has laid GWOP No.3 of 2018 against the husband to appoint a guardian for the minor daughter and the same is pending on the file of the Family Court, Erode.

3.Both the parties, putting forth certain inconvenience and hardship and also apprehending danger to their life and body at the hands of the other party, have come forward with the necessary transfer petitions, whereby, the husband has prayed for the transfer of the proceeding laid by the wife to the Sub-Court, Tiruppur. Whereas, the wife has claimed the transfer of the proceeding laid by the husband to the Family Court, Erode. Furthermore, the husband has also contended that as per Section 9 of the Guardian and Wards Act, 1890, it is only the Court, where the minor is residing, which would have the jurisdiction to entertain the Guardian O.P and therefore, on that ground also prayed for the transfer of the GWOP laid by the wife to the file of the Principal District Court, Tiruppur.

4.Per contra, with reference to the abovesaid contentions, it is contended by the wife that considering the age of the child, it is only the mother, viz., the wife, who would be natural guardian of the child and accordingly, further contending that the Family Court, Erode would have the jurisdiction to try all the issues involved between the parties qua their marital issues, accordingly, contending the common issues are involved in these matters, prayed for the transfer of the divorce proceeding laid by the husband to the Family Court, Erode to advance the cause of justice.

5.In support of his contentions, the counsel for the husband placed reliance upon the decision reported in 2010-5-L.W.1023 (Sandhiya Vs.D.Gunasekaran). In support of his contentions, the counsel for the wife placed reliance upon the decisions reported in 2008 (4) CTC 520 (M.Deepalakshmi Vs. R.Ramesh), (2007) 1 Supreme Court Cases 97 (State Bank of India Vs. Ranjan Chemicals Ltd., and Another), 2016-3-L.W.320 (Divya Vikram Vs. Vikram Vijayaraghavan) and (2006) 4 M.L.J. 694 (Dr.M.S.Gayathri Vs. Dr.S.Natarajan). The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

6.After hearing the respective counsel, it is found that the parties are monetarily well placed and the apprehension entertained by both the parties respectively is that the other party may cause harm to their body and life and accordingly, prayed for the transfers as put forth in their respective petitions. In my considered opinion, considering the issues involved in all the proceedings abovestated, focusing on the marital life of the parties, it is seen that the consolidation of all the proceedings together and the determination of the same by one and the same Court would be beneficial to both the parties and also would promote the cause of justice. Furthermore, the parties also would be required to adduce the common evidence in all the matters. Therefore, the only point to be determined is how to overcome the apprehension felt by each party at the hands of the other party as putforth in their respective petitions. Accordingly, via-media during the course of arguments, it is suggested by the counsel for the wife that all the proceedings may be transferred to the Court at Namakkal or the Court at Salem and on the other hand, the counsel for the husband suggested that the proceedings may be transferred to the Court at Coimbatore.

7.Considering the contentions putforth by the respective parties and their residence as well as their status and in particular, the apprehension put forth by the parties that they may be caused harm by

their other party respectively, not to be easily discarded, in all, I am of the opinion that the interest of justice would be served, if all the proceedings are tried and determined by the Family Court, Namakkal and accordingly, HMOP No.84 of 2018 on the file of the Principal Sub-Court, Tirupur, HMOP No.189 of 2018 on the file of the Family Court, Erode and G.W.O.P.No.3 of 2018 on the file of the Family Court, Erode, are withdrawn and transferred to the file of the Family Court, Namakkal, for disposal as per law.

Accordingly, the Transfer Civil Miscellaneous petitions are disposed of. Consequently, connected Civil Miscellaneous Petitions, if any, are closed.

28.09.2018

Index : Yes / No

Internet : Yes / No

sms

To

- 1.The Principal Sub-Court, Tirupur.
- 2.The Family Court, Erode.
- 3.The Family Court, Namakkal.

T.RAVINDRAN, J.

sms

Pre-delivery Order made
in Transfer CMP.Nos.476, 511
& 534 of 2018

28.09.2018