

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.12.2018

Coram

THE HON'BLE MR. JUSTICE R. PONGIAPPAN

Tr. C.M.P. No.493 of 2018

and

CMP.No.12180 of 2018

Mrs. Sivagami ... Petitioner/Respondent

Vs.

P. Velumani ... Respondent/Petitioner

Prayer: The Transfer Civil Miscellaneous Petition filed under Section 24 of Code of Civil Procedure to withdraw H.M.O.P.No.122 of 2017 pending on the file of Subordinate Court, Attur and to transfer the same to Subordinate Court, Tambaram.

For Petitioner : Mr. T. Velu

For Respondent : No appearance

O R D E R

The Transfer Civil Miscellaneous Petition filed under Section 24 of Code of Civil Procedure to withdraw H.M.O.P.No.122 of 2017 pending on the file of Subordinate Court, Attur and to transfer the same to Subordinate Court, Tambaram.

2. The petitioner Sivagami is the respondent in H.M.O.P No.122 of 2017 pending on the file of Subordinate Court, Attur. This application has been filed by the petitioner seeking the relief to withdraw H.M.O.P.No.122 of 2017 pending on the file of Subordinate Court, Attur and to transfer the same to Subordinate Court, Tambaram.

3. The petitioner is the wife and the respondent is the husband. The marriage between the petitioner and the respondent was solemnized in the year of 2005 at Veerakanur Perumal Temple, Salem District as per Hindu Rites and Customs. After the marriage, both of them were residing in Attur. Out of the wedlock, the petitioner gave birth to one female child and one male child. After gave birth to two children, due to the difference of opinion arose between them, the petitioner left

the matrimonial home on 28.03.2014 and thereupon she was living separately along with her children at Guduvancherry, Chennai.

4. In the meantime, the respondent filed a petition against the petitioner before the Subordinate Court, Attur for the restitution of conjugal Rights by levelling so many allegations against the petitioner. In the said circumstances, the petitioner approached this Court for the relief stated in the 1st paragraph of this Order.

5. In respect to the respondent, service was completed as early as in the month of August 2018. Subsequent to that, even after printing his name in the cause list, he has not appeared before this Court either personally or through Advocate. Finally, in the last hearing, since the respondent was not appeared before this Court, this Court directed the Registry to post the matter under the caption of "Orders". Today 06.12.2018 also, the respondent has not appeared before this Court. Accordingly, we have to decide the issue raised in this case based on the submission made by the petitioner as well as through the documents produced by the petitioner.

6. The only grievance addressed by the petitioner in this case is that the distance between Attur and Guduvancherry is too long and hence, it is very difficult to the petitioner to attend the Court proceedings at Attur. In this aspect, it is true that the distance between Attur and Guduvancherry is nearly 300 kms. Hence, being a lady, it is very difficult for the petitioner to attend the Court proceedings at Attur.

7. In the said circumstances, it is relevant to look into the decision of our Honourable Apex Court, reported 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. In the said Judgment, it was held that the convenience of the wife must be taken into account for deciding these type of applications. Further, in Hindu Marriage Act, there is an enabling provision in favour of the wife.

8. Accordingly, the Transfer civil Miscellaneous Petition is allowed. The case in H.M.O.P.No.122 of 2017 is ordered to be withdrawn from the file of the Subordinate Court, Attur and ordered to be transferred to the file of Subordinate Court, Tambaram within a period of two weeks from the date of receipt of a copy of this order. The Subordinate Judge, Attur is

directed to transmit the case records of H.M.O.P.No.122 of 2017 to Subordinate Court, Tambaram. On receipt of such records, the Subordinate Judge, Tambaram is directed to dispose the case as expeditiously as possible. The connected miscellaneous petition is closed. No costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

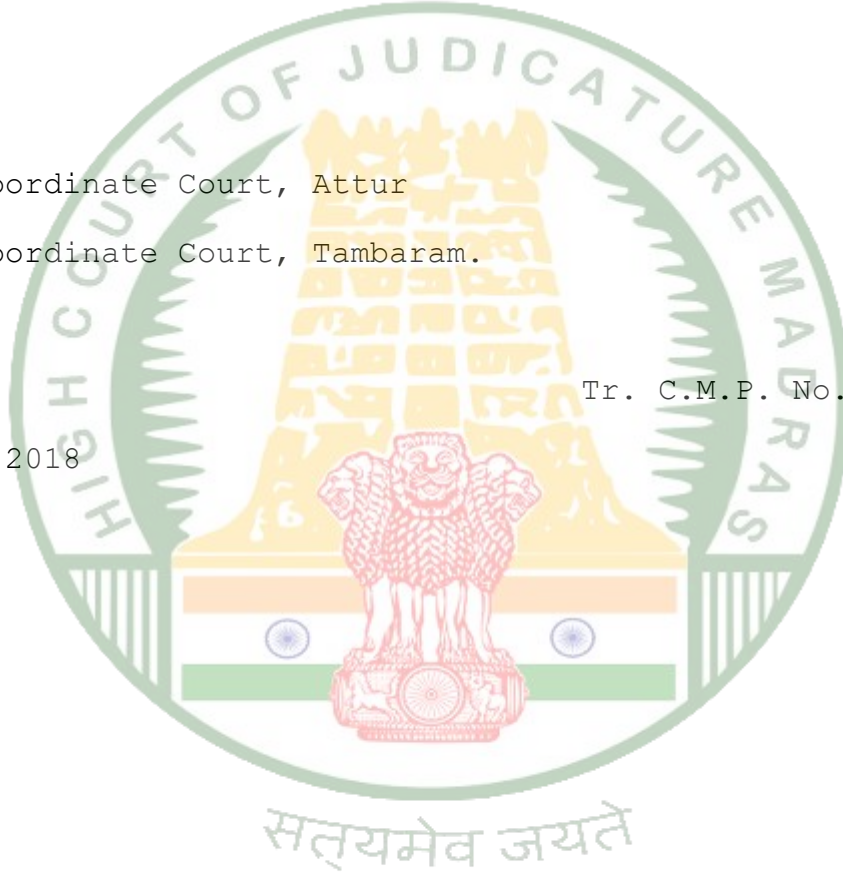
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To

1. The Subordinate Court, Attur
2. The Subordinate Court, Tambaram.

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CSL/27.12.2018

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