

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.10.2018

PRONOUNCED ON : 10.10.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

Transfer CMP.No. 634 of 2018
and
CMP.No.15633 of 2018

K.Esther

....

Petitioner

Vs.

F.Benitto Prabu

...

Respondent

Prayer :- Transfer Civil Miscellaneous Petition has been filed under Section 24 of CPC to withdraw the FCIDOP No.53 of 2018 from the file of the Hon'ble Family Court, Chengalpet and transfer the same to Family Court at Trichy.

For Petitioner : Mr.N.Devarajan

For Respondent : Mr.S.Sathyaraj

ORDER

The petitioner is the wife. The respondent is the husband.

2.The respondent has levied divorce case against the petitioner in FCIDOP No.53 of 2018 and the same is pending on the file of the Family Court, Chengalpet.

3.Seeking transfer of the abovesaid proceeding from the Family Court, Chengalpet to the Family Court, Trichy, the transfer petition has come to be laid by the petitioner on the footing that she is a resident of Trichy and has to look after her female child and furthermore, as she had suffered injury in her Spinal Cord, her movement had been restricted to a larger extent and therefore, she cannot travel from Trichy to Chengalpet with her child and therefore, sought for the transfer.

4.The respondent resisted the transfer request of the petitioner contending that the petition had been laid by the petitioner only to cause hardship to the respondent and according to the respondent, considering the nature of the

proceeding pending on the file of the Chengalpet Court, the petitioner's presence may not be required on all the occasions and accordingly, prayed for the dismissal of the transfer petition. Furthermore, it is also pleaded by the respondent that if the proceeding is transferred to Trichy, the respondent being a resident of Chennai would also find it difficult to conduct the proceeding at Trichy Court, considering the long distance between the residence of the respondent and Trichy Court and accordingly, prayed for the transfer of the proceeding to a Court located midway to the parties, in the event of the Court inclining to accept the transfer request of the petitioner.

5.The petitioner's counsel would still contend that even if the proceeding is transferred to a midway Court, the petitioner would find it difficult to attend the proceeding considering her ill-health and therefore, prayed for the transfer of the proceeding only to Trichy Court.

6.In the matter of transfer of the proceeding from one Court to another Court, the convenience and hardship experienced by both the parties should be taken into consideration. Now, the petitioner has projected the case of transfer to Trichy Court from Chengalpet Court on the footing that the distance between her residence at Trichy to Chengalpet Court is on the higher side. Admittedly, the distance between Trichy and Chengalpet is on the higher Side. Equally, it is therefore noted that the respondent also would be put to loss and hardship in the event of the proceeding being transferred to Trichy Court from Chengalpet Court as prayed for. Therefore, as rightly put forth, the conduct of the proceeding in a Court lying midway to both the parties would advance the cause of justice.

7.The petitioner's counsel would contend that considering her injury in the Spinal Cord, she is unable to travel longer distance, accordingly, prayed for the transfer of the proceeding only to Trichy Court. However, other than producing the report of the MRI Scan, the petitioner has not placed any proof to show that she would be unable to travel as projected in the matter and also not placed any medical certificate to evidence that on account of the injury, as found in the abovesaid report, her movement had been restricted and that, she cannot travel long distance as claimed. It is the case of the respondent that the petitioner has already entered appearance in the Chengalpet Court through her counsel and therefore, it is his contention that even admitting that the health condition of the petitioner would disable her to travel long distance, considering the nature of the proceeding, it is seen that the petitioner's presence may not be required on all the hearing dates and in such view of the matter, merely from the report of the MRI Scan projected by the petitioner, we cannot safely conclude that the

petitioner is hindered from attending the proceeding at the midway Court.

8.Considering the residence of both the parties, in all, it is seen that a midway Court would be ideal and convenient for the conduct of the proceeding to both the parties and accordingly, the FCIDOP No.53 of 2018 is withdrawn from the file of the Family Court, Chengalpet and transferred to the file of the Villupuram Family Court for disposal as per law.

Accordingly, the Transfer Civil Miscellaneous Petition is disposed of. Consequently, connected CMP No.15633 of 2018 is closed.

Sd/-

Assistant Registrar(CS vi)

//True Copy//

Sub Assistant Registrar

sms

To

- 1.The Judge, Family Court, Chengalpet.
- 2.The Judge, Family Court, Villupuram

+1cc to Mr.N.Devarajan , Advocate SR.No. 70205

+2cc to Mr.S.Sathyaraj , Advocate SR.No. 69921

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ASK(09/11/2018)

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