

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Tr.C.M.P.No.670 of 2018
and
C.M.P.No.16527 of 2018

Saranya

..Petitioner

.Vs.

Ranjith Kumar

..Respondent

Prayer: Petition is filed under Section 24 of C.P.C., to withdraw H.M.O.P.No.65 of 2018 pending on the file of the Sub Court, Uthangarai and transfer the same to the file of the Family Court, Salem, to be tried along with the Petition in F.C.O.P.No.335 of 2018 pending on its file.

For Petitioner : Mr.P.Valliappan

For Respondent : Mr.K.Thiruvengadam

O R D E R

This Transfer Civil Miscellaneous Petition has been filed under Section 24 of the Code of Civil Procedure to withdraw H.M.O.P.No.65 of 2018 pending on the file of the Sub Court, Uthangarai and transfer the same to the file of the Family Court, Salem, to be tried along with the Petition in F.C.O.P.No.335 of 2018 pending on its file.

2. The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was solemnized on 17.02.2016 at Pattukottai, as per Hindu rites and customs. After the marriage, both the petitioner and respondent were lived together in the matrimonial home at Bangalore, after some time from the date of marriage, difference of opinion arose between them, thereby the respondent forced the petitioner to go to her parents home. Accordingly, on 09.05.2016, the petitioner left the matrimonial home. After leaving the matrimonial home,

the petitioner gave birth to one female child and the said child is now with the petitioner. Further, she filed a petition before the Family Court, Salem, under Sections 13(1)(a) of the Hindu Marriage Act, 1955, for annulling the marriage. The said petition is now pending before the Family Court, Salem as F.C.O.P.No.335 of 2018.

3. In the meantime, the respondent filed a petition before the Sub Court, Uthangarai, under Section 9 of the Hindu Marriage Act, 1955, for the relief of restitution of conjugal rights. The said petition is now pending before the Sub Court, Uthangarai, as H.M.O.P.No.65 of 2018. In the said petition, the respondent made various allegations against the petitioner.

4. According to the petitioner, she is residing at Salem, along with her parents. The distance between her residence and Uthangarai is about 75 kilometers and being a lady, it is very difficult for her to go to Uthangarai 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. Unless both the O.Ps. are heard together and decided jointly, there will be a chance for coming out the conflicting judgments. 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.

5. The learned counsel appearing for the respondent submitted that it will not be difficult for the petitioner to attend the Court at Uthangarai and prayed for dismissal of the transfer petition.

6. 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.

7. This petition has been filed by the petitioner by stating the inconvenience faced by her in attending the Court at Uthangarai.

8. For considering the above contention raised by the learned counsel appearing for the petitioner, as well as by the learned counsel appearing for the respondent, it is relevant to see the pronouncement of the Hon'ble Supreme Court in the judgments 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.

9. Accordingly, the Transfer Civil Miscellaneous Petition is ordered. The petition in H.M.O.P.No.65 of 2018 is ordered to be withdrawn from the file of the Sub Court, Uthangarai and transferred to the file of the Family Court, Salem, to be tried along with F.C.O.P.No.335 of 2018 filed by the petitioner, in order to avoid multiplicity of proceedings and conflicting judgments being delivered by two different Courts. The learned Subordinate Judge, Uthangarai, is directed to transmit all the records pertaining to H.M.O.P.No.65 of 2018 to the file of the Family Court, Salem, within a period of two weeks from the date of receipt of a copy of this order. On receipt of records, the learned Judge, Family Court, Salem, is directed to dispose of the case as expeditiously as possible. No costs. Consequently, connected Miscellaneous Petitions are closed.

sri

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Judge,
Uthangarai.

2.The Judge,
Family Court, Salem.

+1cc to Mr.P.Valliappan, Advocate,Sr.No.88085

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rr(CO)
kak(30/01/2019)

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