

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Tr.C.M.P.Nos.695 and 696 of 2016
and C.M.P.Nos.18196 and 18197 of 2016

G.Ammulakshmi

.. Petitioner in
both Tr.C.M.Ps.

Vs.

R.Gnanasekaran

.. Respondent in
both Tr.C.M.Ps.

PRAYER in Tr.C.M.P.No.695/2016: Petition filed under Section 24 of the Civil Procedure Code, to withdraw H.M.O.P.No.243 of 2011 pending on the file of the Sub Court, Poonamallee and transfer the same to any other Court in Chennai.

PRAYER in Tr.C.M.P.No.696/2016: Petition filed under Section 24 of the Civil Procedure Code, to withdraw G.W.O.P.No.108 of 2016 pending on the file of the Principal District Court, Tiruvallur and transfer the same to any other Court in Chennai.

For Petitioner : Mr/s.M.G.Rajeswari
for Mr.V.Vineeth Kumar

For Respondent : No appearance

C O M M O N O R D E R

Tr.C.M.P.No.695/2016 has been filed to withdraw H.M.O.P.No.243 of 2011 pending on the file of the Sub Court, Poonamallee and transfer the same to any other Court in Chennai.

Tr.C.M.P.No.696/2016 has been filed to withdraw G.W.O.P.No.108 of 2016 pending on the file of the Principal District Court, Tiruvallur and transfer the same to any other Court in Chennai.

2.The issues and the parties involved in both the Transfer Civil Miscellaneous Petitions are one and the same and therefore, they are disposed of by this common order.

3. In both the Transfer Civil Miscellaneous Petitions, the petitioner is wife and respondent is the husband. The marriage between the petitioner and respondent was conducted on 18.05.2008 as per Hindu Rites and Customs. In the wed-lock a male child was born on 23.08.2010. Due to difference of opinion, the respondent thrown the petitioner out from the matrimonial home. The petitioner is residing at Adambakkam along with minor son. While so, the respondent filed H.M.O.P.No.243 of 2011 before the Sub Court at Poonamallee for restitution of conjugal rights and the respondent also filed G.W.O.P.No.108 of 2013 before the Principal District Court at Tiruvallur for custody of child. As per Section 9 of Guardians and Wards Act, 1890, the Principal District Court, Tiruvallur has no jurisdiction to entertain G.W.O.P.

4. According to the learned counsel for the petitioner, the petitioner is residing at Adambakkam along with minor child. As the distance between Adambakkam and Tiruvallur is 60 kms, being a lady it will be very difficult for her to travel along with minor son to attend each and every hearing. In the circumstances, the petitioner has come out with the present two Transfer Civil Miscellaneous Petitions to transfer H.M.O.P.No.243 of 2011 pending on the file of the Sub Court, Poonamallee and G.W.O.P.No.108 of 2016 pending on the file of the Principal District Court, Tiruvallur to any other Court in Chennai.

5. Heard the learned counsel for the petitioner and perused the materials available on record. Though notice has been served on the respondent and his name is printed in the cause list, there was no representation for him for the past two hearings viz., 18.04.2018 and 24.04.2018. Today also, there is no representation for the respondent either in person or through counsel.

6. Considering the above contention of the learned counsel for the petitioner and well settled judicial pronouncement of the Hon'ble Supreme Court in the Judgments reported in 2008 (9) SCC 353 [Arti Rani @ Pinki Devi and another Vs. Dharmendra Kumar Gupta] and AIR 2002 SC 396 [Sumita Singh Vs. Kumar Sanjay and another], 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. The interest of the minor and residence of minor are the paramount consideration while considering the petition for custody of minor.

7. Accordingly, both the Transfer Civil Miscellaneous Petitions are ordered. The petition in H.M.O.P.No.243 of 2011 and G.W.O.P.No.108 of 2016 are ordered to be withdrawn from the

file of the Sub Court, Poonamallee and Principal District Judge, Tiruvallur respectively and transferred to the file of the Principal Family Court, Chennai. The learned Subordinate Judge, Poonamallee and Principal District Judge, Tiruvallur are directed to transmit all the records pertaining to H.M.O.P.No.243 of 2011 and G.W.O.P.No.108 of 2016 respectively to the file of the Principal Family Court, Chennai within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True copy//

Sub Assistant Registrar

gsa

To

- 1.The Subordinate Judge,
Poonamallee.
- 2.The Principal Judge,
District Court,
Tiruvallur
- 3.The Principal Judge,
Family Court,
Chennai.

सत्यमेव जयते

Tr.C.M.P.Nos.695 and 696 of 2016
and C.M.P.Nos.18196 and 18197 of 2016

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PPA(CO)
GN(29/06/2018)