

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.12.2018

Coram

THE HON'BLE MR. JUSTICE R. PONGIAPPAN

Tr. C.M.P. No.246 of 2017
and
CMP.No.4424 of 2017

N. Selvi

Petitioner / Respondent

Vs.

S. David Millan Sagar

Respondent /Petitioner

Prayer: Transfer Civil Miscellaneous Petition filed under Section 24 of Code of Civil Procedure to withdraw I.D.O.P.No.323 of 2016, pending on the file of District Court, Nagarcoil and to transfer the same to District Court, Chengalpat to be tried along with I.D.O.P.No.24 of 2017.

For Petitioner : Mr. N. Berlin Prabhu for
M/s. TKS Gandhi

For Respondent : No appearance

O R D E R

This petition has been filed under Section 24 of Code of Civil Procedure to withdraw I.D.O.P.No.323 of 2016 pending on the file of District Court, Nagarcoil and to transfer the same to District Court, Chengalpat for joint trial along with I.D.O.P.No.24 of 2017.

2. The petitioner is the wife and the respondent is her husband. The marriage between the petitioner and the respondent was solemnized on 26.05.2008 as per Christian Rites and Ceremonies at Assembly of God Church, Nagarcoil. After the marriage, the petitioner and the respondent were leading a happy marital life, resultantly on 15.08.2010, they were blessed with a girl child namely Hepsiba and now she is studying 1st standard.

3. After gave birth to the above female child, from the year of 2010 onwards, difference of opinion arose between the petitioner and the respondent and on 05.05.2013, the respondent intentionally quarreled with the petitioner and forcefully

brought her to Chennai Central Railway station, from there he left his wife along with the child as orphans. Thereafter, the petitioner joined with her age old parents at Chennai.

4. In the meantime, the respondent had filed an application against the petitioner for the relief of divorce. The said case has been pending before the District Court, Nagercoil, in I.D.O.P No.323 of 2016.

5. In the said circumstances, the petitioner approached this Court by way of filing this Transfer Civil miscellaneous petition and prayed as stated in the 1st para of this order. According to the petitioner, the distance between Chennai and Nagercoil is about 600 kms. Hence, it is very difficult to her in attending the Court proceedings in Nagercoil. Further, she is not having any independent income.

6. In respect to the respondent, the notice sent to him was received by his sister on 30.11.2018. After receiving the notice, the respondent has not appeared before this Court either personally or through an Advocate. Hence, this Court is directed the Registry to list this petition under the caption of "For orders". Today, even after printing the name of the respondent in the cause list, he has not appeared before this Court for representing his case.

7. In the said circumstances, it is necessary to see whether the petitioner projected the sufficient cause for allowing this petition. It is an admitted fact that she is having a female child in the age of 6 years. Further, the distance between Chennai and Nagercoil is about 600 kms. So, it is very difficult for her to attend the Court proceedings in Nagercoil. Apart from that, she is not having any independent income to meet out her travelling expenses.

8. In the said circumstances, it is relevant to see 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. In this case, applying the said principle, it is true, being a lady, it is very difficult for the petitioner to go to Nagercoil for attending the Court proceedings. Further, as of now, she is depending upon her parents for her day to day needs. So, this Court is of the considered view that allowing the application is the appropriate remedy for either side.

9. Accordingly, the Transfer Civil Miscellaneous Petition is allowed. The case in I.D.O.P.No.323 of 2016 is ordered to be withdrawn from the file of District Court, Nagarcoil and transferred to the file of District Court, Chengalpat. The learned Principal District Judge, Nagercoil is directed to transmit the case records pertaining to I.D.O.P.No.323 of 2016, to the District Court, Chengalpat within a period of two weeks from the date of receipt of a copy of this order. On receipt of such records, the learned Principal District Judge, Chengalpat is directed to dispose both the cases either by jointly or simultaneously (I.D.O.P.No.323 of 2016 and I.D.O.P.No.24 of 2017) as expeditiously as possible. The connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The District Court, Nagercoil
2. The District Court, Chengalpat

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SSM(30/01/2019)