

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.724 of 2018

and

CMP.No.17743 of 2018

Mrs. Maria Pauline Janet

...Petitioner

Vs.

Mr. Justin Narbert

...Respondent

Prayer: The Transfer Civil Miscellaneous Petition filed under Section 24 of Code of Civil Procedure to withdraw I.D.O.P.No.8 of 2017 pending on the file of Principal District Court, Thanjavur and to transfer the same to Family Court, Chennai.

For Petitioner : Ms. M. Vijayalakshmi

For Respondent : Mr. K. Myilsamy

for Mr. Va.Vu.Si. Vazhakagam

O R D E R

The Transfer Civil Miscellaneous Petition filed under Section 24 of Code of Civil Procedure to withdraw I.D.O.P.No.8 of 2017 pending on the file of Principal District Court, Thanjavur and to transfer the same to Family Court, Chennai.

2. The petitioner Maria Pauline Janet is the respondent in I.D.O.P No.8 of 2007 pending on the file of Principal District Court, Thanjavur. This application has been filed by the petitioner seeking the relief to withdraw I.D.O.P.No.8 of 2017 pending on the file of Principal District Court, Thanjavur and to transfer the same to Family Court, Chennai.

3. The marriage between the petitioner and the respondent was solemnized on 23.01.2015 at St. Anthony's Church, Kizhakapisthalam, Thanjavur as per Christian Rites and Customs. After the marriage, a matrimonial home was set up at No.89, Flat No.F-1, VGP Dr. Vimala Nagar, 4th Main Road, Medavakkam, Chennai - 600 100 and they were started their life at Chennai. Out of the wedlock, the petitioner gave birth to one female child on 20.11.2015. After some time from the date of marriage, due to

the difference of opinion arose between the petitioner and the respondent, the petitioner left the matrimonial home and residing with her parents at Kodungaiyur.

4. In the meantime, the respondent filed an application under Section 10 (ix) (x) of Indian Divorce Act, 1869 against the petitioner before the Principal District Court, Thanjavur, in which he is seeking the relief of divorce. On the other hand, the petitioner filed an application under Section 125 of Cr.P.C against the respondent, before the II Additional Family Court at Chennai in MC No.420 of 2018. In the said circumstances, the petitioner approached this Court by way of filing this petition, for the relief stated in the 1st paragraph of this Order. In the application filed by the petitioner, she has raised so many allegations against the respondent, since those allegations are related to her matrimonial life, it has to be dealt only at the time of trial before the trial Court. In respect to this petition, it is relevant to see, whether sufficient cause was projected by the petitioner or not.

5. In respect to the respondent, he received a notice as early as on 08.11.2018. Subsequently, the Counsel appearing for the respondent has not filed any Counter to deny the allegations levelled against the respondent.

6. However, according to the petitioner, the distance between Chennai and Thanjavur is nearly 350 kms. Being a lady, it is very difficult for the petitioner to attend the Court proceedings at Thanjavur.

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. In this case, applying the said principle, it is true, being a lady, it is very difficult to the petitioner to go to Thanjavur 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.

8. Accordingly, the Transfer civil Miscellaneous Petition is allowed. The case in I.D.O.P.No.8 of 2017 is ordered to be withdrawn from the file of Principal District Court, Thanjavur and ordered to be transferred to the file of Family Court, Chennai within a period of two weeks from the date of receipt of a copy of this order. The Principal District

Judge, Thanjavur is directed to transmit the case records pertaining to I.D.O.P.No.8 of 2017, to Family Court, Chennai. On receipt of such records, the Presiding Officer of the Family Court, Chennai is directed to dispose the case as expeditiously as possible. The connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vrn

To

1.The Principal District Judge, Thanjavur

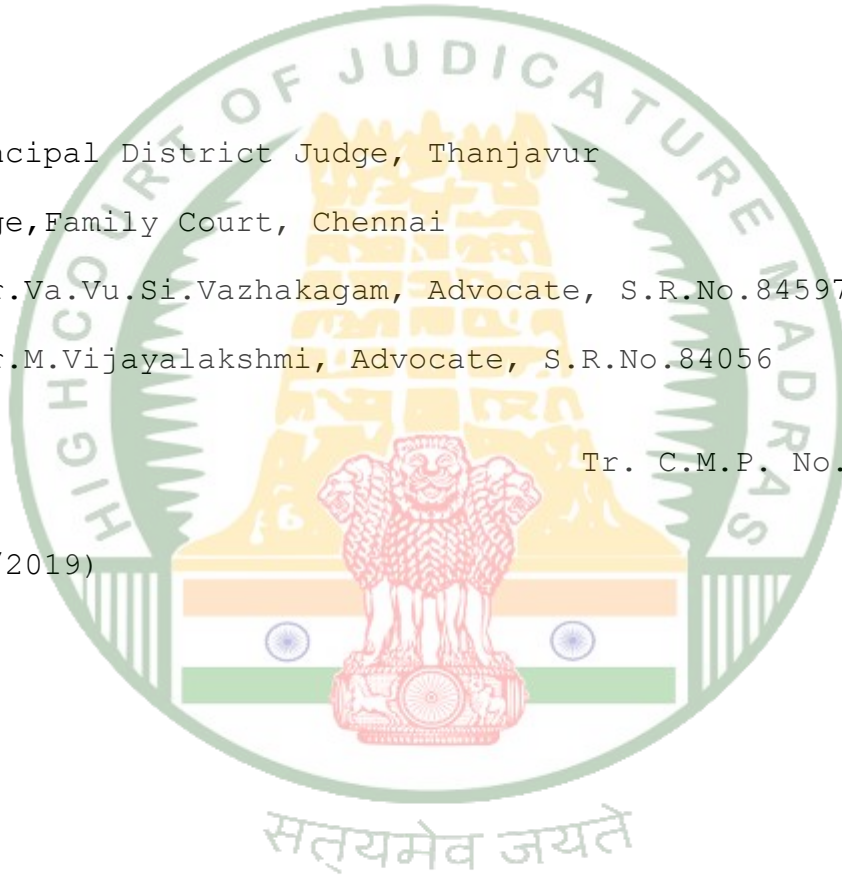
2.The Judge,Family Court, Chennai

+1cc to Mr.Va.Vu.Si.Vazhakagam, Advocate, S.R.No.84597

+2cc to Mr.M.Vijayalakshmi, Advocate, S.R.No.84056

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SSD(CO)
GSP(08/01/2019)



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