

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Transfer CMP. No.707 of 2018
and
CMP.No.17548 of 2018

V.Harini.

...Petitioner / Respondent

Vs

V.Kannan

...Respondent / Petitioner

PRAYER: Transfer Civil Miscellaneous Petition filed under Section 24 (1) (b) (ii) of Code of Civil Procedure with a prayer to withdraw the H.M.O.P.No. 2334 of 2018 from the file of the III Additional Family Court, Chennai and to transfer the same to the file of Subordinate Court, Poonamallee to be tried jointly along with HMOP NO.103 of 2018.

For Petitioner : Mr.J.Thilagaraj

For Respondent : No appearance

O R D E R

This petition is filed to withdraw H.M.O.P.2334 of 2018 from the file of the III Additional Family Court, chennai and to transfer the same to the Sub Court, Poonamallee, to be tried along with H.M.O.P.No. 103 of 2018 pending on its file.

2) The petitioner V.Harini is the wife and the respondent V.Kannan is the husband. The marriage between the petitioner and the respondent was solemnized on 21.08.2015 at V.S.R. Thirumana Mandapam, Madambakkam Main Road, Guduvancheri, Kancheepuram District. As per the Hindu religious rites and customs Act. After, the marriage both the petitioner and the respondent were living in the matrimonial home. Due to the wedlock the petitioner gave birth to two children and thereafter, due to the difference of opinion the respondent ill-treated the petitioner went to the extent of questioning the paternity of the children. Thereafter, the petitioner left the matrimonial home and living with her parents. The petitioner

filed a H.M.O.P.103 of 2018 before the Sub Court, Poonamallee. In which, she is seeking the relief of restitution of conjugal rights. In the mean time, the respondent filed another one application in H.M.O.P.No.2334 of 2018 before the III Additional Family Court, Chennai, seeking the relief of divorce. In both the applications, both of them making a various allegations against each others.

3) According to the petitioner, she is residing No.6/20, Srinivasapuram-II Main Road, Korattur, Chennai, along with her parents. The distance between her residence to chennai is more than 40 kilometers and being a lady, it is very difficult for her to go to chennai to attend the Court proceedings. Further, she is not having any independent income and she is depending upon her parents for her day to day expenses and travelling expenses. According to her, unless both the H.M.O.Ps are heard together and decided jointly, there will be conflicting judgments. In the circumstances, the petitioner has come out with the present Tr.C.M.P. To transfer H.M.O.P.No.2334 of 2018 from the file of the III Additional Family Court and to transfer the same to the Sub Court at Poonamallee.

4) Today, when the petition is taken up for consideration, even after print the name of the respondent in the cause list, none have been represented on behalf of the respondent.

5) Heard, the learned Counsel for the petitioner.

6) Considering the above contention of the learned counsel for the petitioner and on go through the 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, the place of residence of wife must be taken into account for considering these type of applications.

7) Accordingly, the Transfer civil Miscellaneous Petition is ordered. The case in H.M.O.P.No.2334 of 2018 is ordered to be withdrawn from the file of the learned III Additional Family Judge, Chennai, and to be transferred to the Subordinate Court, Poonmallee, to be tried along with the H.M.O.P.No.103 of 2018 filed by the petitioner, in order to avoid multiplicity of proceedings and conflicting judgments being delivered by two different Courts. The learned III

Additional Family Judge, Chennai, is directed to transmit all the records pertaining to H.M.O.P.No. 2334 of 2018 to the file of the Subordinate Court, Poonmallee, within a period of two weeks from the date of receipt of a copy of this order. On receipt of records, the Subordinate Court, Poonmallee, is directed to dispose of the case as expeditiously as possible in any event not later than 31.12.2018. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sbn

To

1.The Subordinate Court, Poonamallee,

2.III Additional Family Court, Chennai,

+2cc to Mr.J.Thilagaraj, Advocate, S.R.No.78073

Transfer CMP No.707 of 2018

VGII(CO)
GSP(11/12/2018)