

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.12.2018

Coram

THE HON'BLE MR. JUSTICE R. PONGIAPPAN

Tr. C.M.P. No.721 of 2018

and

CMP.No.17717 of 2018

Jeyanthi Jabamalar

Petitioner / Respondent

Vs.

Asir Thangaraj

Respondent / Petitioner

Prayer: The Transfer Civil Miscellaneous Petition filed under Section 24 of Code of Civil Procedure to withdraw I.D.O.P.No.161 of 2017 pending on the file of Principal District Court, Tuticorin and to transfer the same to Subordinate Court, Vellore.

For Petitioner : Mr. S. Silambu Selvan

For Respondent : No appearance

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.161 of 2017 pending on the file of Principal District Court, Tuticorin and to transfer the same to Subordinate Court, Vellore.

2. The petitioner is the wife and the respondent is her husband. The marriage between the petitioner and the respondent was solemnized on 31.05.2004 at CSI Christian Church, Kothalarivillai, Tuticorin District according to the Christian Rites and Customs. After the marriage, both the petitioner and the respondent were living in Vellore. Due to the wed-lock, they were blessed with one female child and one male child. Their daughter Blessy Evangeline is studying 7<sup>th</sup> Standard at "IDA Scudder School", Vellore District and their son is studying LKG at Campus Kids Corner School, Vellore District. After some time from the date of marriage, due to the difference of opinion arose between them, the petitioner left the matrimonial home. In the mean time, the respondent filed an application against the petitioner seeking the relief of annulling the marriage happened between them. As of now, the said application was pending with Principal District Court, Tuticorin for disposal.

3. In the mean time, the petitioner approached this Court, by way of filing this application praying the relief as stated in the 1<sup>st</sup> para of this order. In the

application filed by the petitioner, she made various allegations against the respondent. According to her, she was working as Staff nurse in Christian Medical College Hospital, Vellore and her children also studying in Vellore. So, it is very difficult for her to attend the Court proceedings at Tuticorin. Even though, she is having sufficient money to spend for travelling expenses, since the distance between Tuticorin and Vellore is about 300kms and for attending the Court proceedings at Tuticorin, much time is required for the petitioner. Being a lady, working as a staff nurse, it is very difficult for her to attend the Court proceedings at Tuticorin.

4. In respect to the respondent, even after receiving the notice, he has not appeared before this Court either personally or through an Advocate. When the matter was taken up for hearing on 06.12.2018, there was no representation on either side. Thereby, this Court directed the Registry to list the matter under the caption of "Orders". Even today, the respondent has not appeared before this Court. So, I am of the considered view that this application has to be disposed of according to the averments made in the petition and based on the circumstances.

5. Since, the respondent has not appeared before this Court, we can come to the conclusion that the averment in the petition is not disputed. In other words, it is true that reaching Tuticorin from Vellore will take minimum 1 day travel. So, it is difficult for the petitioner to attend the Court proceedings at Tuticorin.

6. Moreover, 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.

7. Accordingly, the Transfer civil Miscellaneous Petition is allowed. Even though, the petitioner prays to withdraw I.D.O.P.No.161 of 2017 from the file of Principal District Court, Tuticorin to Subordinate Court, Vellore, in view of the fact that the Subordinate Court is not having any jurisdiction to try the Divorce petition filed under the provision of Indian Divorce Act. Hence, I.D.O.P.No.161 of 2017 is ordered to be withdrawn from the file of Principal District Court, Tuticorin and ordered to be transferred to the file of Principal District Court,

Vellore within a period of two weeks from the date of receipt of a copy of this order. The Principal District Judge, Tuticorin is directed to transmit the case records pertaining to I.D.O.P.No.161 of 2017 to Principal District Court, Vellore. On receipt of such records, the Principal District Judge, Vellore is directed to dispose of the case as expeditiously as possible. The connected miscellaneous petition is closed. No costs.

vrn

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

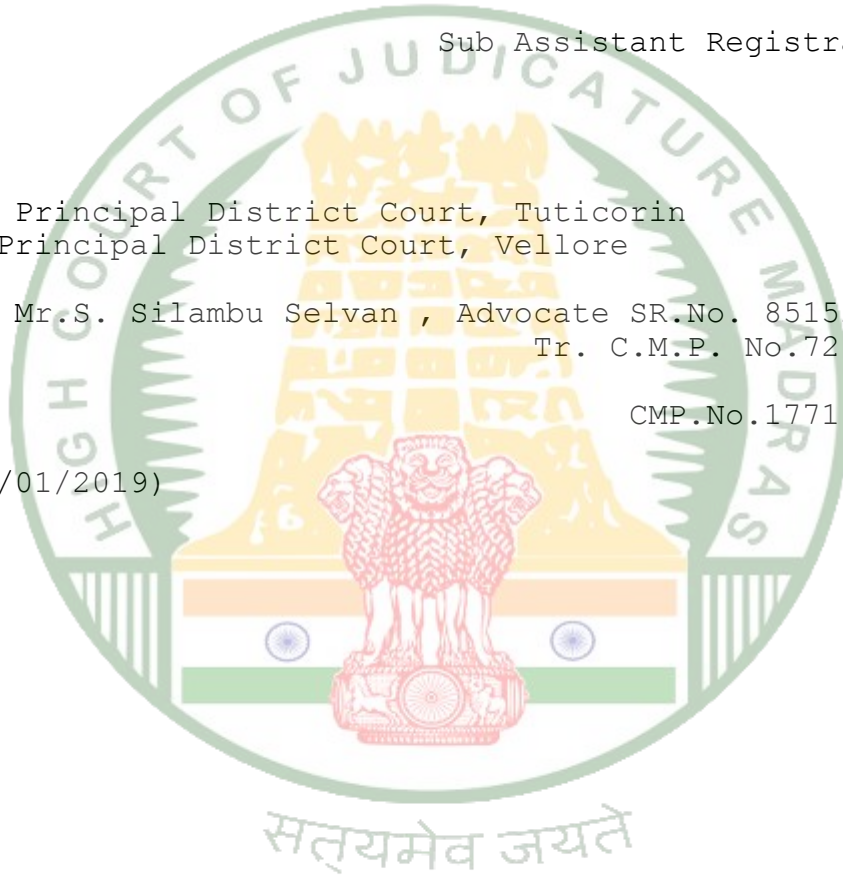
1. The Principal District Court, Tuticorin
2. The Principal District Court, Vellore

+lcc to Mr.S. Silambu Selvan , Advocate SR.No. 85152

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A.SK(23/01/2019)



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