

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 03.12.2018
JUDGMENT PRONOUNCED ON : 10.12.2018

CORAM
THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Tr.C.M.P.No.734 of 2018
and C.M.P.Nos.17927 and 17930 of 2018

T.Sowmiya

..Petitioner

versus

J.Prabhakaran

..Respondent

Prayer: Petition is filed under Section 24 of C.P.C., to withdraw H.M.O.P.No.54 of 2018 pending on the file of the Sub Court, Sankari and transfer the same to the file of the Family Court, Erode, to try along with F.C.O.P.No.217 of 2017 pending on its file.

For Petitioner : M/s.Lavanya
for Mr.M.Guruprasad

For Respondent : Mr.S.Kaithamalai Kumaran

O R D E R

This Transfer Civil Miscellaneous Petition has been filed to withdraw H.M.O.P.No.54 of 2018 pending on the file of the Sub Court, Sankari and transfer the same to the file of the Family Court, Erode, to try along with F.C.O.P.No.217 of 2017 pending on its file.

2. The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was solemnized on 11.07.2016 at Angalaparameswari Thirukoil, Erode, as per Hindu rites and customs. After the marriage, both the petitioner and respondent were living in the matrimonial home for some time, subsequently due to difference of opinion, the petitioner left the matrimonial home and living separately with her parents. Further, the petitioner filed a petition before the Family Court, Erode, against the respondent, for annulling the marriage. The said petition is now pending before the Family Court, Erode as F.C.O.P.No.217 of 2017. Subsequent to that, the respondent filed a petition before the Sub Court, Sankari, for

the relief of restitution of conjugal rights. The said petition is now pending before the Sub Court, Sankari as H.M.O.P.No.54 of 2018. In both the petitions, both of them made various allegations against each other.

3. According to the petitioner, she is residing at Erode, along with her parents. The distance between her residence and Sankari is more than 24 kilometers and being a lady, it is very difficult for her to go to Sankari to attend the Court proceedings. Further, she is not having any independent income and she is depending on her parents for her day-to-day expenses and travelling expenses. Unless both the O.Ps. are heard together and decided jointly, there will be a chance for coming out the conflicting judgments. In the said circumstances, the petitioner has come out with the present Transfer Civil Miscellaneous Petition for the relief stated earlier in the first paragraph of this order.

4. The learned counsel appearing for the respondent submitted that it will not be difficult for the petitioner to attend the Court at Sankari and prayed for dismissal of the transfer petition.

5. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondent and also perused the materials available on record.

6. This petition has been filed by the petitioner by stating the inconvenience faced by her in attending the Court at Sankari.

7. For considering the above contention raised by the learned counsel appearing for the petitioner, as well as by the learned counsel appearing for the respondent, it is relevant to see the pronouncement of the Hon'ble Supreme Court in the judgments 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, wherein the Hon'ble Apex Court has held that 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.

8. Accordingly, the Transfer Civil Miscellaneous Petition is ordered. The petition in H.M.O.P.No.54 of 2018 is ordered to be withdrawn from the file of the Sub Court, Sankari and transferred to the file of the Family Court, Erode, to be tried along with F.C.O.P.No.217 of 2017 filed by the petitioner, in order to avoid multiplicity of proceedings and conflicting judgments being delivered by two different Courts. The learned

Subordinate Judge, Sankari, is directed to transmit all the records pertaining to H.M.O.P.No.54 of 2018 to the file of the Family Court, Erode, within a period of two weeks from the date of receipt of a copy of this order. On receipt of records, the learned Judge, Family Court, Erode, is directed to dispose of the case as expeditiously as possible. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

sri

To

1.The Subordinate Judge, Sankari.

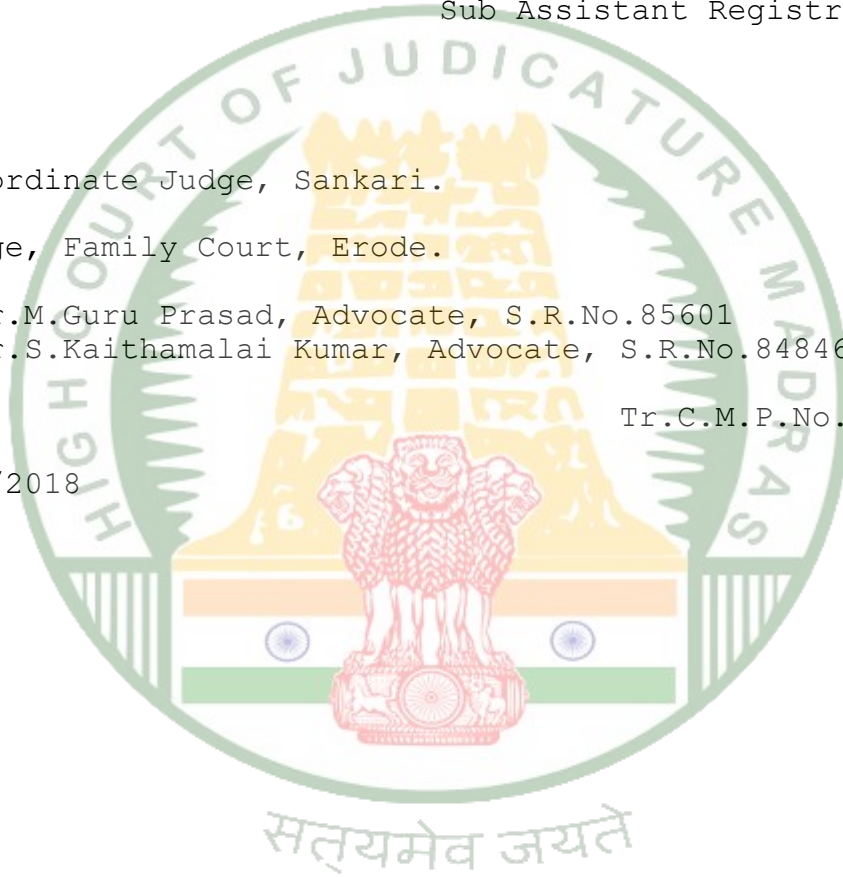
2.The Judge, Family Court, Erode.

+lcc to Mr.M.Guru Prasad, Advocate, S.R.No.85601

+lcc to Mr.S.Kaithamalai Kumar, Advocate, S.R.No.84846

Tr.C.M.P.No.734 of 2018

rrs 27/12/2018



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