

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.12.2018

Coram

THE HON'BLE MR. JUSTICE R. PONGIAPPAN

Tr. C.M.P. No.787 of 2018

and

CMP.No.19460 of 2018

G.Ganga

..Petitioner

Vs.

C.Karunakaran

..Respondent

Prayer: Transfer Civil Miscellaneous Petition filed under Section 24 of Code of Civil Procedure to withdraw H.M.O.P.No.181 of 2018, pending on the file of the Family Court, Dharmapuri and to transfer the same to Subordinate Court, Tambaram.

For Petitioner : Mrs.C. Meera Arumugam

For Respondent : Mr.P.Valliappan

O R D E R

This Transfer Civil Miscellaneous Petition has been filed by the petitioner under Section 24 of Code of Civil Procedure to withdraw H.M.O.P.No.181 of 2018, now pending on the file of the Family Court, Dharmapuri and to transfer the same to Subordinate Court, Tambaram, for joint or simultaneous trial along with H.M.O.P.No.661 of 2018, now pending before Subordinate Court, Tambaram.

2. The petitioner is the wife and the respondent is her husband. The marriage between the petitioner and the respondent was held on 25.04.2012, as per Hindu Rites and Customs. After the marriage, since the petitioner was working as Lecturer in Tagore Engineering College and the respondent was working as Development Officer in L.I.C, Velachery Branch, Chennai, both of them were lived together in the matrimonial home at Chennai for a considerable period. Thereafter, due to the difference of opinion arose between the petitioner and the respondent, the petitioner left the matrimonial home and joined with her parents, who are residing at No.9, G2 - Ground Floor, P.G. Illam, 1st Cross Street, Thirumalai Nagar, Hastinapuram, Chennai - 600 064.

3. Subsequently, the petitioner filed an application against the respondent under Section 9 of Hindu Marriage Act

1955, for the relief of restitution of conjugal rights. As of now, the said application is pending before the Subordinate Court, Tambaram in H.M.O.P.No.661 of 2018. On the other hand, the respondent has filed an application against the petitioner under Section 13 i(a) (1-b) of Hindu Marriage Act 1955. The said application is now pending with the Family Court, Dharmapuri in H.M.O.P.No.181 of 2018. In the said circumstances, the petitioner has approached this Court by way of filing this petition, seeking the relief as stated in the 1st para of this Order.

4. According to the petitioner, the distance between Chennai and Dharmapuri is nearly 300 kms. Hence, it is very difficult for the petitioner to attend the Court proceedings at Dharmapuri. Moreover, if both the cases are tried in different Courts, there may be a chance for coming out the conflicting Judgments. Accordingly, it is necessary to allow this application for better adjudication.

5. On the other hand, by filing Counter statement, the learned Counsel appearing for the respondent would contend that after few days from the date of marriage, the petitioner became very sick and it was found that the petitioner was suffering from TB in her bone. In otherwise, after knowing the nature of decease, the petitioner refused to come back to the matrimonial home for living with the respondent. According to him, only in order to harass the respondent, she filed the application before the Subordinate Court, Tambaram.

6. Heard Mrs.C. Meera Arumugam, the learned Counsel appearing for the petitioner and Mr.P.Valliappan, the learned Counsel appearing for the respondent.

7. Considering the submissions made on either side, it is an admitted fact that the respondent and the petitioner are husband and wife. In the affidavit filed by the petitioner and in the Counter affidavit filed by the respondent, both the petitioner and the respondent have raised various allegations against each other. Since, this application is filed for the relief of transferring the case H.M.O.P.No.181 of 2018 from the file of Family Court, Dharmapuri to the file of Subordinate Court, Tambaram, it is not necessary to deal with the allegations raised by either side parties as whether the same are true or not. The only issue has to be decided in this case is whether the petitioner projected sufficient cause for allowing this petition.

8. Since, the respondent himself alleged that the petitioner is suffering from TB (Bone), being a patient, it is very difficult for the petitioner to travel from Tamabaram to Dharmapuri (nearly 300 kms) for attending the Court proceedings at Dharmapuri. Further, as per the Judgment of our Honourable

Apex Court, 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, the convenience of the wife must be taken into account for deciding these type of applications. Further, in order to avoid conflicting decisions from two different Courts, it is necessary that both the petition mentioned cases have to be tried in one Court.

9. In the light of the above discussions, the Transfer civil Miscellaneous Petition is allowed. The case H.M.O.P.No.181 of 2018 is ordered to be withdrawn from the file of Family Court, Dharmapuri and ordered to be transferred to the file of Subordinate Court, Tambaram. The Presiding Officer of the Family Court, Dharmapuri is directed to transmit the case records pertaining to H.M.O.P.No.181 of 2018 to to the file of Subordinate Court, Tambaram, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such records, the Subordinate Judge, Tambaram is directed to dispose the case H.M.O.P.No.181 of 2018 along with H.M.O.P.No.661 of 2018, which is now pending before Subordinate Court, Tambaram, as expeditiously as possible. The connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

vrn

To

1.The Judge,
The Family Court,
Dharmapuri

2.The Subordinate Judge,
Tambaram

+1cc to Mr.C.Meera Arumugam, Advocate, S.R.No.88115

+1cc to Mr.P.Valliappan, Advocate, S.R.No.88086

Tr. C.M.P. No.787 of 2018
and
CMP.No.19460 of 2018

rrs 11/01/2019