

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Tr.C.M.P.No.801 of 2018
and C.M.P.No.19757 of 2018

Poongodi

..Petitioner/Respondent

versus

Vijayakumar

..Respondent/Petitioner

Prayer: Petition is filed under Section 24 of C.P.C., to withdraw H.M.O.P.No.48 of 2018 pending on the file of the Sub Court, Coonoor and transfer the same to the Sub Court, Gobichettipalayam.

For Petitioner : M/s.J.Lavanya
for Mr.S.Parthasarathy

For Respondent : No Appearance

O R D E R

This Transfer Civil Miscellaneous Petition has been filed under Section 24 of the Code of Civil Procedure to withdraw H.M.O.P.No.48 of 2018 pending on the file of the Sub Court, Coonoor and transfer the same to the Sub Court, Gobichettipalayam.

2. The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was solemnized on 04.09.2008 at Thittamalai Murugan Koil, Nambiyur, as per Hindu rites and customs. After the marriage, both the petitioner and respondent were lived together in the matrimonial home in Kothagiri at Uthagamandalam. Due to the wedlock, the petitioner gave birth on 04.03.2010 to one male child, namely, Dakshin. After gave birth to the above said child, difference of opinion arose between the petitioner and respondent, resultantly, on 16.07.2017, the petitioner left the matrimonial home and residing along with her parents at Gobichettipalayam. Further, she filed a petition under Domestic Violence Act before the learned Judicial Magistrate Court, Gobichettipalayam.

3. In the meantime, the respondent has filed a petition against the petitioner before the Sub Court, Coonoor, seeking the relief of restitution of conjugal rights. As of now, the said petition is pending before the Sub Court, Coonoor as H.M.O.P.No.48 of 2018.

4. According to the petitioner, she is residing at Gobichettipalayam along with her parents. The distance between her residence and Coonoor is about 200 kms and being a lady, it is very difficult for her to attend the Court proceedings at Coonoor. Further, she is not having any independent income and she is depending on her parents for her day-to-day expenses and travelling expenses. 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.

5. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

6. Though notice was served on the respondent as early as on 08.12.2018 and his name is printed in the cause list, there is no representation on behalf of him either in person or through counsel.

7. In the said circumstances, in order to deny the averments made in the affidavit filed by the petitioner, the respondent has not turned up. As per the affidavit filed by the petitioner, as of now, she is residing with her parents at Gobichettipalayam. Further, in the affidavit filed by the petitioner she has specifically stated that, she is residing at Gobichettipalayam with her parents, being a lady, it is very difficult for her to attend the Court proceedings at Coonoor.

8. It is well settled law that whenever, the transfer petition is filed in matrimonial disputes, the convenience of the wife shall be given preference, as held by our Honourable Apex 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.

9. Apart from that, for raising objection in respect to the allegations levelled by the petitioner against the respondent, he has not appeared before this Court, further as per the provisions of the Hindu Marriage Act, place of residence of wife must be taken into account for considering the issue involved in these type of petitions. So, considering the various parameters laid already by the Hon'ble Apex Court as well as by this Court, this Court came to the conclusion that allowing the petition is the proper remedy for leading their cases by the petitioner and respondent.

10. In the result, the Transfer Civil Miscellaneous Petition is ordered. The petition in H.M.O.P.No.48 of 2018 is ordered to be withdrawn from the file of the Sub Court, Coonoor and transferred to the file of the Sub Court, Gobichettipalayam. The Subordinate Judge, Coonoor, is directed to transmit all the records pertaining to H.M.O.P.No.48 of 2018 to the file of the Sub Court, Gobichettipalayam, within a period of two weeks from the date of receipt of a copy of this order. On receipt of records, the learned Subordinate Judge, Gobichettipalayam, is directed to dispose of the case as expeditiously as possible. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-

Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

sri
To

1.The Subordinate Judge,
Coonoor.

2.The Subordinate Judge,
Gobichettipalayam.

+1 CC to Mr.S.Parthasarathy, Advocate sr 87868.

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CA (CO)
SP (23/01/2019)

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