

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Transfer CMP. No.813 of 2018
and C.M.P.No.20038 of 2018

A.N.Udhayabanu

Petitioner

Vs

A.Vignesh

Respondent

PRAYER: Transfer Civil Miscellaneous Petition filed under Section 24 of the Code of the Civil Procedure to withdraw the H.M.O.P.No.166 of 2018 pending on the file of the Subordinate Court, Madurai (Melur Camp) and to transfer the same to the 5th Additional Family Court, Chennai, for joint trial along with O.P.No.3385 of 2018.

For Petitioner : Mr.V.K.Raja Gopalan

For Respondent : Mr.S.Santhosh

O R D E R

The petitioner is the respondent in H.M.O.P.No.166 of 2018 pending on the file of the Subordinate Court, Madurai (Camp Court). The said application has been filed by the respondent seeking the relief of annulling the marriage happened between the petitioner and with the respondent on 19.01.2017. Now, this application has been filed by the petitioner praying to withdraw the above said H.M.O.P.No.166 of 2018 from the file of the Subordinate Court, Madurai, and to transfer the same to the Court of V Additional Family Court, at Chennai for joint trial along with O.P.No.3385 of 2018

2. Admittedly, the petitioner is the wife and the respondent is the husband. The marriage between the petitioner and the respondent was held on 19.01.2017 at Rajaprabha Mahal, 5th Main Road, Gomathipuram, Madurai, according to Hindu Rites and Customs. After the marriage, both the petitioner and the respondent came to Chennai and started the matrimonial life in Sathyam Apartments, Choolaimedu, Chennai-94. After some time, from the month of June 2017, difference of opinion arose between

the petitioner and the respondent. Resultantly, the petitioner left the matrimonial home and joined with her parents who they are residing at Chennai.

3. Subsequently, on 16.08.2018 the petitioner filed an application against the respondent under the provisions of Section 9 of Hindu Marriage Act, 1955. In the said application she sought the relief of restitution of conjugal rights. As of now, the said application is pending with the 5th Additional Family Court at Chennai in O.P.No.3385 of 2018. In the meanwhile, the respondent has filed an application against the petitioner, under the provisions of Section 13(1)(1A) of Hindu Marriage Act, praying the annulment the marriage happened between the petitioner and to respondent. As of now, the said case is pending before the Subordinate Court, Madurai in H.M.O.P.No.166 of 2018.

4. In the said circumstances, the petitioner has approached this Court by way of filing this application, praying to withdraw the case pending on the file of the Subordinate Court, Madurai and to transfer the same to the V Additional Family Court at Chennai for joint trial along with O.P.No.3385 of 2018.

5. According to the petitioner, since the distance between Chennai and Madurai is about 500 kilo meters, it is very difficult for the petitioner to participate in the Court proceedings in Madurai. Being a lady, it is very difficult for her to attend the proceedings in Madurai.

6. Per contra, the learned counsel appearing for the respondent would submit that the petitioner, being a Doctor there would not be any difficulty in attending the proceedings before the Subordinate Court, Madurai.

7. Considering the submissions made on either side, since this application filed by the wife, it is necessary and useful to refer to the judgment of the Honourable Apex Court 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]. In the above judgments the Honourable 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 the residence of wife must be taken into account.

8. Apart from that, if both the cases (i.e. H.M.O.P.No.166 of 2018 and O.P.No.3385 of 2018) are tried by the different forum, there may be the chance for coming out the conflicting judgment. Hence, trying both the matters in a single forum is the appropriate remedy for the proper adjudication.

9. Accordingly, the Transfer Civil Miscellaneous Petition is allowed. The petition in H.M.O.P.No.166 of 2018 is ordered to be withdrawn from the file of the Subordinate Court, Madurai and shall stand transferred to the file of the V Additional Family Court, Chennai, to be tried along with O.P.No.3385 of 2018 filed by the petitioner, in order to avoid multiplicity of proceedings and conflicting judgments being delivered by two different Courts. The learned Subordinate Judge, Madurai is directed to transmit all the records pertaining to H.M.O.P.No.166 of 2018 to the file of the V Additional Family Court, Chennai, within a period of two weeks from the date of receipt of a copy of this order. On receipt of records, the learned V Additional Family Court Judge, Chennai, is directed to dispose of both the cases by joint trial as expeditiously as possible, within a period of six (6) months. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sbn

To

1) The Learned Subordinate Judge (Melur Camp), Madurai.

2) The 5th Additional Judge, Family Court, Chennai.

+1 cc to Mr.V.K.Rajagopalan, Advocate, S.R.No.85526

+1 cc to Mr.S.Santosh, Advocate, S.R.No.86438

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RV(CO)
SSM(31/01/2019)

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