

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 11.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN
Transfer CMP. No.821 of 2018
and C.M.P.No.20204 of 2018

Jayalakshmi

..Petitioner

Vs

Balamurugan

...Respondent

PRAYER: Transfer Civil Miscellaneous Petition filed under Section 24 of the Code of the Civil Procedure to withdraw H.M.O.P.No.69 of 2018 pending on the file of the Subordinate Court, Virudhachalam and to transfer the same to the Family Court, Chennai.

For Petitioner : Mr.J.Antony Jesus

For Respondent : Mr.A.Arasu Ganesan

O R D E R

The petitioner is the respondent in H.M.O.P.No.69 of 2018 pending on the file of the Subordinate Court Virudhachalam. She has filed an application under Section 24 of Civil Procedure Code, praying to withdraw the above said H.M.O.P. from the Subordinate Court, Virudhachalam, and to transfer the same to the file of the Family Court, Chennai.

2. The petitioner is the wife and the respondent is the husband. The marriage between the petitioner and the respondent was conducted on 27.08.2010 at Arulmigu Kolanchiyappar Thirukoil, Virudhachalam, as per the Hindu Rites and Customs. After the marriage both the petitioner and the respondent were residing in Virudhachalam. In the mean time, the petitioner got conceived and thereby she left the matrimonial home for the delivery of her first child. Subsequent to that, the petitioner gave birth to one female child and the respondent had never turned up or came to see the baby. Finally, in the year of 2012, the mother and the sisters of the respondent forcefully dispossessed the petitioner from the matrimonial home. Subsequently, the dispute between the petitioner and the respondent was pacified. Further in the year of 2014 again the petitioner was driven away from the matrimonial home. As of now, the petitioner is having two female children.

3. In the said circumstances, the respondent had filed the petition before the Subordinate Court, Virudhachalam. In which,

he seeking the relief of annulling the marriage happened between the petitioner and the respondent. As of now, the said case has been pending in the above said Court in H.M.O.P.No.110 of 2014.

4. After filing the above case, on receipt of the notice from the said case, the petitioner has approached this Court, by way of filing this application for the relief stated in the first paragraph of this order.

5. According to the petitioner, the distance between Chennai and Virudhachalam is nearly 200 kilo meters. It is very difficult for her to go to Virudhachalam and attend the Court proceedings along with her children. Further, she is depending upon her parents for her day to day expenses and travelling expenses.

6. Resisting the claim made by the petitioner, the respondent has filed a counter statement stating that the petitioner voluntarily left the matrimonial home and residing with her parents. Initially, he had filed the application under Section 9 of Hindu Marriage Act, for the relief of restitution of conjugal rights and the same was pacified due to the attempt made by the elderly persons, but after some time, the petitioner created the same problem and left the matrimonial home. The activities of the petitioner forced the respondent in filing of the application for Divorce. In otherwise, it is not difficult to the petitioner to participate in the Court proceedings in the Subordinate Court, Virudhachalam.

7. Today, Mr.J.Antony Jesus the learned counsel appearing for the petitioner and Mr.A.Arasu Ganesan the learned counsel appearing for the respondent are present.

8. Initially, since this Transfer Civil Miscellaneous Petition is filed by the wife. It is relevant 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 our Honourable Apex Court has observed 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 for deciding these type of cases. Applying the said principle in this case, the petitioner is residing in Chennai. She is not having any independent income. Therefore, it is very difficult for her to attend the Court proceedings in Virudhachalam.

8. In the light of the above discussion, the Transfer Civil Miscellaneous Petition is allowed. The case in H.M.O.P.No.69 of

2018 is ordered to be withdrawn from the file of the Subordinate Court, Virudhachalam and to transfer the same to the file of the 5th Additional Family Court, Chennai. The learned Subordinate Judge, Virudhachalam, is directed to transmit all the records pertaining to H.M.O.P.No.69 of 2018 to the file of the 5th 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 5th Additional Family Court Judge, Chennai, is directed to dispose of the case as expeditiously as possible. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Judge, Virudhachalam

2.The 5th Additional Family Judge, Chennai.

+1cc to Mr.A.Arasuganesan, Advocate, S.R.No.85595

+1cc to Mr.J.Antony, Advocate, S.R.No.86410

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RSV(CO)
GSP(05/02/2019)

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