

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.822 of 2018

and

CMP.No.20235 of 2018

V. Uma Maheshwari

Petitioner

Vs.

P. Veeramanikandan

Respondent

Prayer: The Transfer Civil Miscellaneous Petition filed under Section 24 of Code of Civil Procedure to withdraw H.M.O.P.No.203 of 2017 pending on the file of Subordinate Court, Tambaram and to transfer the same to Subordinate Court, Cuddalore.

For Petitioner : Mr. W.M. Abdul Majeed
for G.Sumitra

For Respondent : Mr. J. Saravanavel

O R D E R

The Transfer Civil Miscellaneous Petition has been filed under Section 24 of Code of Civil Procedure to withdraw H.M.O.P.No.203 of 2017 pending on the file of Subordinate Court, Tambaram and to transfer the same to Subordinate Court, Cuddalore.

2. The petitioner is the wife and the respondent is her husband. The marriage between the petitioner and the respondent was registered on 10.02.2012 at the Sub-Registrar Office, Cuddalore. Subsequent to the marriage, the petitioner and the respondent were lived together in Chennai. After some time from the date of marriage, due to the difference of opinion arose between the petitioner and the respondent, the petitioner left the matrimonial home and joined with her parents in Vadalore.

3. In the meantime, the respondent filed an application against the petitioner under Section 13 (i) (ia) of Hindu Marriage Act for the relief of annulling the marriage. As of now, the said case has been pending with Subordinate Court, Tambaram in H.M.O.P No. 203 of 2017. In this circumstances, the petitioner approached this Court, by way of filing this petition seeking the relief as stated in the 1st paragraph of this Order.

4. The learned counsel appearing for the petitioner would contend that the petitioner is not having any independent income. According to the petitioner, the distance between Vadalore and Tambaram is about 150 kms and hence it is very difficult for her in participating the Court proceedings at Tambaram.

5. On the other hand, by filing counter statement, the learned counsel appearing for the respondent would contend that as of now, the petitioner forcefully entering in the house belongs to the respondent, which was situated in Medavakkam, Chennai. Further, it is a specific contention of the respondent that the petitioner was employed and was earning a considerable amount. According to him, this petition is liable to be dismissed.

6. Heard Mr. W.M. Abdul Majeed, the learned Counsel appearing for the petitioner and Mr. J. Saravanavel, 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 HMOP No. 203 of 2017 from 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. In this regard, the only ground raised by the petitioner is, she is residing in her parents house at Chennai, hence it is very difficult for her to attend the Court proceedings at Cuddalore.

8. Now, considering the contention raised by the learned Counsel appearing for the petitioner as well as the respondent and the Judgment of our Honourable Apex Court, reported 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. In the said Judgment, it was held that the convenience of the wife must be taken into account for deciding these type of applications. Further, there is an enabling provision is available in Hindu Marriage Act, in which it was held that the convenience of wife has to be taken into account.

9. However, as per the contention raised by the respondent, he was working as a Service Engineer in a private organization and residing at Thiruvannamiyur. In the said circumstances, if the prayer sought for by the petitioner is fully allowed, it is very difficult for the respondent to appear before the Subordinate Court, Cuddalore. Since there is no frequent train facilities is available between Chennai and Cuddalore, as a matter of fact that Tindivanam is a place situated in between Vadalore and Chennai. So it is appropriate to transfer the petition mentioned case to the file of Principal Subordinate Court, Tindivanam.

10. Accordingly, the Transfer civil Miscellaneous Petition is allowed. The case in H.M.O.P.No.203 of 2017 is ordered to be withdrawn from the file of Subordinate Court, Tambaram and ordered to be transferred to the file of Principal Subordinate Court, Tindivanam. The Subordinate Judge, Tambaram is directed to transmit the case records pertaining to H.M.O.P.No.203 of 2017 to Principal Subordinate Court, Tindivanam, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such records, the Principal Subordinate Judge, Tindivanam is directed to dispose the case not later than 29.06.2019. The connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge, Tambaram
2. The Principal Subordinate Judge, Tindivanam

+1cc to G.Sumitra, Advocate sr.no.88310
+1cc to Mr. J. Saravanavel, Advocate sr.no.88534

Tr. C.M.P. No.822 of 2018
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nr 25/01/2019