



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 17.07.2018

CORAM:
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN, J

Transfer C.M.P.(MD) Nos.26 and 27 of 2018
and C.M.P.(MD) Nos.645 and 646 of 2018

T.Devi

... Petitioner/Petitioner
in both petitions

-vs-

M.Packiyaraj

... Respondent/Respondent
in both petitions

Prayer in Tr.C.M.P.(MD) No.26 of 2018: Petition filed under Section 24 of the Code of Civil Procedure praying to withdraw the H.M.O.P.No.43 of 2015 on the file of the Principal Subordinate Court, Tenkasi and transfer the same to the file of the Family Court, Coimbatore.

Prayer in Tr.C.M.P.(MD) No.27 of 2018: Petition filed under Section 24 of the Code of Civil Procedure praying to withdraw the H.M.O.P.No.251 of 2015 on the file of the Principal Subordinate Court, Tenkasi and transfer the same to the file of the Family Court, Coimbatore.

For Petitioner : Mr.P.Manianandh
For Respondent : Mr.B.Jeyakumar

COMMON ORDER

The petitioner, who is the wife of the respondent has filed these transfer petitions with the prayer to transfer the cases in H.M.O.P.No.43 of 2015 pending on the file of the Principal Subordinate Court, Tenkasi, filed by her seeking divorce and also the case in H.M.O.P.No.251 of 2015 on the file of the Principal Subordinate Court, Tenkasi, filed by her husband for restitution of conjugal rights, to the file of the Family Court, Coimbatore.

2. It is the case of the petitioner / wife that her marriage with the respondent / husband, which was a love marriage, had taken place on 25.10.2009 and out of their wedlock, they were blessed with a female child. Though they lived happily, subsequently, the respondent started harassing her and refused to live with her. It is the further case of the revision petitioner that in the meanwhile, she was selected as a Staff Nurse and was initially posted at Ooty and later on, transferred to Tirunelveli and finally to Coimbatore on 04.03.2016.



3. It is also submitted by the petitioner / wife that due to unbearable torture meted out by her at the hands of the respondent, she had filed a petition in H.M.O.P.No.43 of 2015 before the learned Principal Subordinate Judge, Tenkasi for divorce and the respondent / husband, in retaliation and to prevent her from obtaining divorce, had filed a petition in H.M.O.P.No.251 of 2015 before the learned Principal Subordinate Judge, Tenkasi, for restitution of conjugal rights.

4. The main ground canvassed by the petitioner is that since she has been working in Coimbatore, she has been spending about Rs.1,500/- per hearing and she is also forced to travel more than 353kms to attend the Court proceedings at Tenkasi. It is further stated that since convenience of the wife should be given paramount consideration, it is prayed that both the cases may be transferred to the Family Court, Coimbatore.

5. Learned counsel for the respondent / husband would submit that the husband is willing to lead a matrimonial life with the petitioner and therefore, he has filed a petition for restitution of conjugal rights. But, it was the petitioner, who, besides filing a petition for divorce, has refused to live with him. It is further contended by the learned counsel for the respondent / husband that the yardstick fixed by the Hon'ble Supreme Court with respect to the term "convenience of the wife is paramount" cannot be applied to the present case and hence, both these petitions are vexatious one and are liable to be dismissed.

6. Heard the learned counsel on either side and also perused the material documents available on record.

7. A perusal of the records would show that the matter was earlier referred to the Mediation Centre for amicable settlement at the instance of the parties, but there was no finality reached between the parties before the Mediation Centre. The reason cited by the petitioner for transfer is her posting as Staff Nurse at Coimbatore and it is pertinent to mention here that in Government Services, transfer from one place to another place is inevitable and the petitioner cannot ask for transfer of cases to other Courts, whenever she is transferred and in that event, no quietus can be given to cases filed in respect of family disputes.

8. Of course, it is a well settled law that convenience of woman is the paramount consideration, while dealing with transfer applications, as held by the Hon'ble Supreme Court in the case of Arti Rani @ Pinki Devi and another Vs. Dharmendra Kumar Gupta, reported in 2008 (9) SCC 353, but the present case does not fall within the said purview, because both the petitioner and the respondent belong to very same locality, namely, Tirunelveli District and on account of administrative reason, she was transferred to Coimbatore on the orders of the Director of Medical and Rural Health Services, as she is working as Staff Nurse and in



future also, she may be transferred to some other Districts for administrative exigency. Hence, the said submission lacks merits acceptance.

9. In fine, finding much force in the contention raised by the learned counsel for the respondent, this Court is of the view that these petitions are liable to be dismissed and in the interest of justice, a direction shall be issued to the Trial Court for early disposal of the petitions and the petitioner also need not appear before the Court in all hearings, except few insisted upon by the Trial Court, rather she is expected of rendering complete particulars to the Advocate, conducting the case on her behalf.

10. In the result,

a) these petitions for transfer are dismissed;

b) the learned Principal Subordinate Judge, Tenkasi is directed to dispose of both H.M.O.P.Nos.43 and 251 of 2015 within a period of two months from the date of receipt of a copy of this order, by conducting trial on day to-day basis without giving adjournment to either parties and the parties shall extend their fullest cooperation for early disposal of the case within the stipulated period as indicated above.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Crl.side)

/True Copy/

Sub Assistant Registrar(CS-I)

To:

1. The Principal Subordinate Judge,
Tenkasi.
2. The Record Keeper,
V.R.Section
Madurai Bench of Madras High Court,
Madurai. **(2 copies)**

+1CC to Mr.P.Manianandh, Advocate, SR.No.73289

+1CC to Mr.B.Jeyakumar, Advocate, SR.No.73358

Transfer C.M.P. (MD) Nos.26 and 27 of 2018

17.07.2018

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