

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 14.03.2018****CORAM****THE HONOURABLE MRS.JUSTICE J.NISHA BANU****TR. C.M.P (MD) .No.34 of 2018****and****C.M.P (MD) No.847 of 2018**

Selvapackiam

... Petitioner/ Respondent

Vs.

Bagavath Singh

... Respondent/ Petitioner

PRAYER:- Transfer Civil Miscellaneous Petition filed under Section 24 of the Civil Procedure Code, 1908, praying to withdraw the D.O.P.No.167 of 2017 on the file of the I Additional District Court, Tirunelveli and try along with the I.D.O.P.No.312 of 2017 pending on the file of the Family Court, Tirunelveli.

For Petitioner

: Mr.H.Arumugam

For Respondent

: No representation

ORDER

This Transfer Civil Miscellaneous Petition is filed seeking transfer of D.O.P.No.167 of 2017, from the file of the I Additional District Court, Tirunelveli to Family Court, Tirunelveli, so as to try the same along with I.D.O.P.No.312 of 2017, which is pending before the Family Court, Tirunelveli.

2. The learned Counsel appearing for the petitioner would submit that the marriage between the petitioner and the respondent was solemnized on 08.07.2002, at CSI St.Thomas Church, Palayamchettikulam. After marriage, both of them lived happily for quite some years and out of the wedlock, the petitioner gave birth to three children, viz., Jeyabharathi on 20.08.2003; Priyankadevi on 03.11.2006; and Iswarya on 19.03.2009. Thereafter, according to the petitioner, the respondent, upon the instigation of his mother, started harassing the petitioner and adding fuel to the same, she along with the three children were driven away to her parental home.

3. The learned Counsel for the petitioner would contend that based on a false complaint, the Police personnels have given custody of the minor child, namely, Iswarya, to the respondent and the other two children are under the custody of the petitioner. In the mean time, the respondent has filed divorce petition in D.O.P.No.167 of 2017 before the I Additional District Court, Tirunelveli, where, the petitioner has filed I.A.No.86 of 2018 seeking interim maintenance and the same are pending.

4. He would further submit that in the meanwhile, the petitioner has filed I.D.O.P.No.312 of 2017 before Family Court,



Tirunelveli, seeking restitution of conjugal rights and M.C.No.75 of 2017, seeking maintenance and the same are pending. In order to try both the petitions together, the petitioner has filed transfer petition in Tr.O.P.No.265 of 2017 before Principal District Court, Tirunelveli and the same was withdrawn with liberty to approach this Court and hence, she is before this Court, with the aforesaid prayer.

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

6. Though notice was served on the respondent and his name was also printed in the cause list, there is no representation on his behalf, either in person or through Counsel.

7. I am satisfied with the reasons stated in the affidavit filed in support of this petition. It is well settled law that convenience of woman is to be taken into consideration at the time of considering transfer applications as held by the Supreme Court in the judgment reported in **2008(9)SCC 353 (Arti Rani @ Pinki Devi and another Vs. Dharmendra Kumar Gupta)**. Therefore, I am inclined to allow the present petition.

8. Accordingly, this petition is allowed and the learned I Additional District Judge, Tirunelveli, is directed to transmit the entire records in D.O.P.No.167 of 2017 to the file of the Family Court, Tirunelveli, within a period of two weeks from the date of receipt of copy of this order. The learned Judge, Family Court, Tirunelveli, shall try both D.O.P.No.167 of 2017 and I.D.O.P.No.312 of 2017 together and dispose of the same, as expeditiously as possible, in the manner known to law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The I Additional District Court,
Tirunelveli.

2. The Family Court, Tirunelveli.

+1cc to Mr.H.Arumugam, Advocate Sr.No.55807

GK

VB/KKR/SAR1/27/03/2018/2P/4C

**TR. C.M.P(MD) .No.34 of 2018
and**

**C.M.P(MD)No.847 of 2018
14.03.2018**