



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.02.2018
(Reserved on 05.09.2017)

WEB COPY

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

TR.CMP(MD)No.294 of 2017
and
CMP(MD)Nos.6435 and 8270 of 2017

Murugeswari

... Petitioner

vs.

Muniyandi

... Respondent

Petition filed under Section 24 of the Civil Procedure Code, to withdraw and transfer the above case in HMOP.No.130 of 2012 from the file of the learned Sub Judge, Palani and transfer the same to the court of learned Sub Court, Periyakulam, Theni District so as to club the same with H.M.O.P.No.36 of 2017 pending on his file and tried together.

For Petitioner : Mr.J.Lawrance
For Respondent : Ms.J.Balameenakshi

ORDER

This Transfer Civil Miscellaneous Petition has been filed to transfer HMOP.No.130 of 2012 from the file of the learned Sub Judge, Palani, to the file of the Sub Court, Periyakulam, Theni District, to try the same along with H.M.O.P.No.36 of 2017 pending on the file of the Sub Court, Periyakulam.

2.Learned counsel for the petitioner would aver among other things that the marriage between the petitioner and respondent had taken place on 13.04.2005 at Thandeeswara Ayyanar Temple, Allinagaram, Sivagangai District, as per Hindu rites and customs and the parties were living happily for a period of one month. Thereafter, the respondent started harassing the petitioner by demanding more money. According to the petitioner, she belongs to poor agricultural coolie family and she lost her parents and she is under the mercy of her brother who is also doing coolie works. Since the petitioner was not able to accede to the demand made by the respondent, she was subjected to mental cruelty and torture and harassment. It was also the case of the petitioner that there was no co-habitation between her and the respondent. Therefore, the petitioner was constrained to lodge a complaint before the Superintendent of Police, Theni, explaining the cruelty and



harassment made out by the respondent for demand of additional dowry and copy of the said complaint was also given to the Inspector of Police, All Women Police Station, Devadanapatti.

3. Learned counsel for the petitioner would further submit that the respondent had been in the habit of talking that the petitioner is having poor complexion and he was also not willing to have co-habitation with her. In these circumstances, the petitioner was unable to lead her life, hence, she filed M.C.No.2 of 2007 claiming monthly maintenance and the learned Judicial Magistrate, Periyakulam, ordered payment of Rs.1,000/- per month towards maintenance to the petitioner.

4. Adding further, learned counsel for the petitioner would submit that though the petitioner was separated from the respondent, she had been taking all earnest efforts for reunion, but the same went in vain. It is further submitted that when there was no co-habitation between the parties, the respondent made a false allegation that the petitioner is not able to conceive. Therefore, the petitioner once again preferred a complaint to the Inspector of Police, All Women Police Station, Devadanapatti, requesting the police to advise the respondent to have co-habitation and to lead a happy married life. According to the petitioner, sensing some legal action from her, the respondent filed HMOP.No.75 of 2006 on the file of Subordinate Judge, Palani, seeking restitution of conjugal rights, in which, he made false allegations against the petitioner. Though the Sub Court at Palani, did not have jurisdiction, since the respondent filed the above petition for restitution of conjugal rights, the petitioner did not object to the same as she was ready and willing to join with the respondent to lead matrimonial life.

5. It is further contended that though HMOP.No.75 of 2006 was allowed, the respondent never took steps to reunite with the petitioner. In the meanwhile, according to the petitioner, the respondent got remarried one Amaravathi and the marriage was held on 27.08.2015. Having come to know about the said illegal and fraudulent act of the respondent, the petitioner gave a complaint before the Superintendent of Police, Dindigul, on 07.09.2015. Based on the said complaint, a case was registered against the respondent for offences under Sections 498(A), 406 and 494 IPC. Thereafter, the respondent filed HMOP.No.130 of 2012 before the Sub Court, Palani, alleging that the petitioner did not comply with the terms of the decree passed in HMOP.No.75 of 2006 and refused for cohabitation. The petitioner appeared in HMOP.No.130 of 2012 and contested the same.

6. It is also submitted that the petitioner is always ready and willing to join with the respondent and therefore, she filed HMOP.No.36 of 2017 for restitution of conjugal rights which is pending. She is under the mercy of her brother who is a coolie and therefore, she is not able to travel to Palani. Hence, she has filed this petition for transfer.



7. Learned counsel for the respondent would contend that the petitioner had deserted the respondent and therefore objected for transfer.

8. It is a settled legal proposition that in transfer petitions regarding matrimonial disputes, convenience of the wife has to be given preference. In this regard, reference can be made to the following decision of the Hon'ble Supreme Court in **Arti Rani @ Pinki Devi and another Vs. Dharmendra Comber Gupta**, reported in **2008 (9) SCC 353**, wherein, it has been held that convenience of the wife must be given preference in the matter of transfer petition.

9. Considering the facts and circumstances of the case and in the light of the legal principle that convenience of the wife has to be given preference, I am of the considered opinion that without advertting to the merits of the case, this Transfer Civil Miscellaneous Petition is liable to be allowed and HMOP.No.130 of 2012 on the file of the Sub Court, Palani, is directed to be transferred to the file of the Sub Court, Periyakulam, Theni District, within a period of two weeks from the date of receipt of a copy of this order. On receipt of the case papers in HMOP.No.130 of 2012, the learned Sub Judge, Periyakulam, Theni District, shall conduct a joint trial of HMOP.No.130 of 2012 and H.M.O.P.No.36 of 2017 pending on his file and dispose of the same in accordance with law expeditiously.

In the result, this Transfer Civil Miscellaneous Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (AD-I)

/True Copy/

Sub Assistant Registrar

To

- 1) The Subordinate Judge, Palani.
- 2) The Subordinate Judge,
Periyakulam, Theni District.

+ 1 CC TO Mr.J.LAWRANCE, ADVOCATE IN SR No. 49240

BALA

TE/CVC/SAR-1 : 27/02/2018 : 3P/4C