

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2019

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Tr.C.M.P.No.443 of 2013
and M.P.No.1 of 2013

R.Kavitha

..

Petitioner

versus

V.Dharmaraj

..

Respondent

Prayer: Petition is filed under Section 24 of C.P.C., to withdraw O.P.No.2545 of 2012 pending on the file of the III Additional Family Court, Chennai and transfer the same to the file of the Sub Court, Chidambaram.

For Petitioner : Mr.N.Sankaravadivel
For Respondent : No Appearance

O R D E R

This Transfer Civil Miscellaneous Petition has been filed under Section 24 of the Code of Civil Procedure to withdraw the case i.e. O.P.No.2545 of 2012 pending on the file of the III Additional Family Court, Chennai and transfer the same to the file of the Sub Court, Chidambaram.

2. The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was solemnized on 20.01.2002 at respondents' house at Thathanur Melur, Udayarpalayam Taluk, Ariyalur District. Due to the wedlock, the petitioner gave birth to one male child on 22.10.2002. After gave birth to male child, difference of opinion arose between the petitioner and respondent, resultantly, the petitioner left the matrimonial home and residing along with her parents at Chidambaram.

3. In the meanwhile, the respondent has filed a petition against the petitioner before the III Additional Family Court, Chennai, for the relief of annulling the marriage happened between them on 20.01.2002. The said petition is now pending before the III Additional Family Court, Chennai as

O.P.No.2545 of 2012.

4. According to the petitioner, she is residing at Chidambaram along with her parents and the distance between her parents residence and Chennai is about 150 kms, being a lady, it is very difficult for her to attend the Court proceedings at Chennai. Further, she is not having any independent income and she is depending on her parents for her day-to-day needs. In the said circumstances, the petitioner has come out with the present Transfer Civil Miscellaneous Petition for the relief stated earlier in the first paragraph of this order.

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

6. In respect to the respondent, repeatedly this Court ordered to issue notice to him, but all the notices were returned for so many reasons. In the said circumstances, the petitioner has filed a petition under Order 5 Rule 20 of the Code of Civil Procedure for substituting service. After allowing the petition, this Court directed the petitioner to take steps for issuing summons to the respondent through paper publication in Dinamalar for the hearing on 12.12.2018. The order passed by this Court has also complied with by the petitioner. Even after made paper publication in the daily newspaper, the respondent has not appeared before this Court. Further, the petition is pending from the year of 2013. So, not receiving of the notice by the respondent shows that he purposely avoiding to receive the notice.

7. It is well settled law that whenever, the transfer petition is filed in matrimonial disputes, the convenience of the wife shall be given preference, as held by our Honourable Apex Court 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 this case also, the petitioner categorically proves that she is residing along with her parents at Chidambaram, further, being a lady, it is very difficult for her to attend the Court proceedings at Chennai. Apart from that, as per the provisions of the Hindu Marriage Act, place of residence of wife must be taken into account for considering the issue involved in these type of petitions.

8. In the result, the Transfer Civil Miscellaneous Petition is ordered. The petition in O.P.No.2545 of 2012 is ordered to be withdrawn from the file of the III Additional Family Court, Chennai and transferred to the file of the Sub Court, Chidambaram. The learned III Additional Judge, Family Court, Chennai is directed to transmit all the records pertaining to O.P.No.2545 of 2012 to the file of the Sub Court,

Chidambaram, within a period of two weeks from the date of receipt of a copy of this order. On receipt of records, the learned Subordinate Judge, Chidambaram, is directed to dispose of the case as expeditiously as possible. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

sri

To

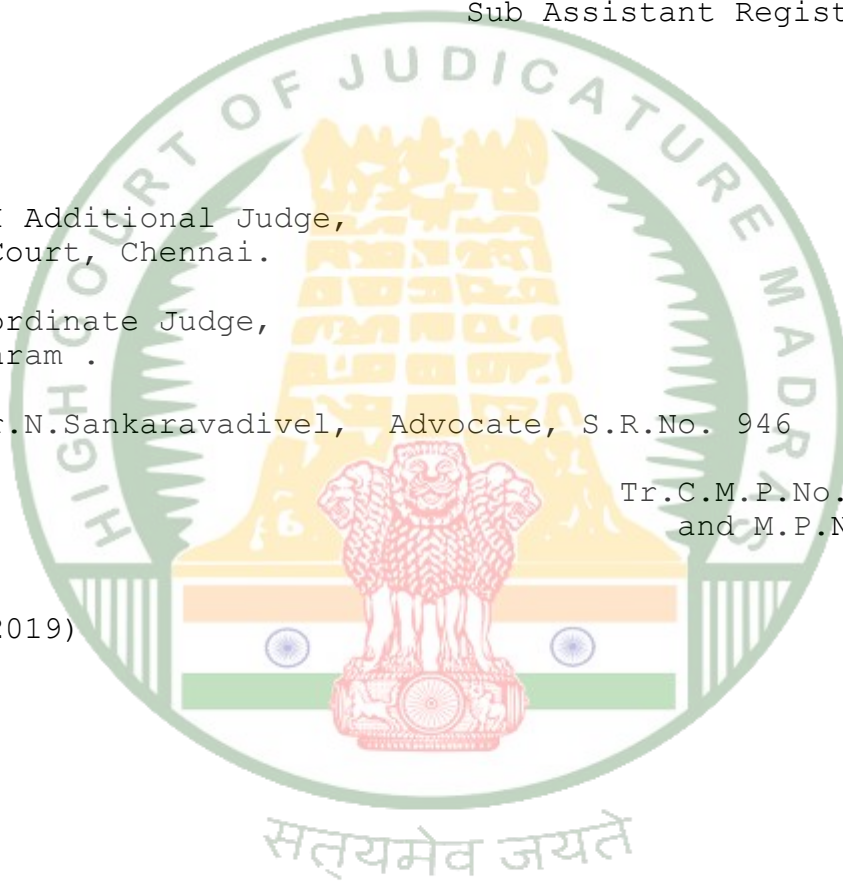
1.The III Additional Judge,
Family Court, Chennai.

2.The Subordinate Judge,
Chidambaram .

+1cc to Mr.N.Sankaravadivel, Advocate, S.R.No. 946

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BR (CO)
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