

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 06.11.2019
CORAM:
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

TR.CMP.No.280 of 2019
and
C.M.P.No. 8120 of 2019

Sumitha @ Vanitha

...Petitioner/Respondent

Vs

Dhanasekar

....Respondent/Petitioner

Prayer:- Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., to withdraw and transfer H.M.O.P.No. 790 of 2018 on the file of the Court of Sub-Ordinate Judge at Poonamallee to the file of Court of Sub-Ordinate Judge, Ranipet, Vellore.

For Petitioner : Mr.T.P.Prabakaran

For Respondent : Mr.K.Velayutham

J U D G M E N T

The petitioner herein, who is the wife of the respondent, has filed this transfer petition seeking to withdraw H.M.O.P No.790 of 2018, on the file of the Subordinate Judge Poonamallee to the Court of Subordinate Judge, Ranipet, Vellore.

2. The case of the petitioner is that she got married to respondent on 27.11.2015, as per the Hindu rites and customs and on 27.12.2015, some difference of opinion arouse between the parties and the petitioner herein started to live with her parents till date. The problem arouse because of incompatibility between the petitioner and respondent and the husband was not well educated and the wife herein is educated person. The petitioner denies all the allegations stated by the respondent and submits that the respondent only refused to live with her and did not allow her to enter in the matrimonial house and she has not deserted the husband and that he has filed a H.M.O.P.No. 790 of 2018 for divorce.

3. Per contra, the case of the respondent is that he had filed a petition for restitution of conjugal rights on 30.11.2017 in H.M.O.P.No.464 of 2017 and the same was decreed on 25.07.2018, after obtaining the said decree, he approached petitioner herein for reunion and in spite of the same, she did not come. Hence, he had filed a petition for divorce before the Sub Court, Poonamalle in H.M.O.P.No. 790 of 2018. The petitioner / wife has not stated anything about the petition filed for restitution of conjugal rights, only she stated about the petition now pending before the Sub-Court on 27.11.2015.

4. The marriage was solemnized but on 27.12.2015 the separation between the parties have started and both of them alleged that the other person is responsible for their desertion. Heard, the learned counsel on either side.

5. The petitioner/wife seeks for transfer from Sub Court, Poonamallee to the Sub Court, Ranipet, Vellore and states that even in spite of restitution of conjugal rights being decreed, only to escape from the maintenance, the respondent has filed restitution and now he has not chosen to take back and chosen to file petition for divorce.

6. The respondent / husband has filed a counter stating that in spite of repeated requests, the wife was not interested in joining him and he has taken steps as per his conscious and it will show that he was interested in living with the wife, but, the wife has no intention and she has not shown any interest to live with him. In spite of receiving the summons, she did not contest case in the petition filed for conjugal rights and now she filed this transfer petition only to harass him and without any genuine reason, she prays to transfer the petition to Sub Court, Poonamalle and there cannot be any impediment to travel from her village to Poonamalle.

7. Apart from the above, the respondent submits that he is taking treatment in Rescue Foundation De-addiction Center, Alcohol & Drugs Hospital on March 2019. The said treatment is ongoing and hence he cannot travel long distances, as suggested by the Doctor. So he cannot travel to Ranipet and contest the case, due to health issues and other than treatment certificate, that he is taking treatment for syndrome and hallucinations which has been stated by the Doctor and the fee receipt has been produced. However, there is no other certificate showing that he cannot travel long distance and he should be always monitored by Doctor has been provided.

8. It is well settled law that whenever, the transfer application is filed in matrimonial disputes, the convenience of the wife shall be given preference, as held by the Hon'ble Supreme Court in the judgments reported in 2008 (9) SCC 353 [Arti Rani @ Pinki Devi and another Vs. Dharmendra Kumar Gpta] and AIR 2002 SC 396 [Sumita Singh Vs. Kumar Sanjay and another]. Further, the petitioner has also given valid and sufficient reasons to transfer the case in O.P.No.206 of 2014 from the file of Family Court, Trichy to the file of Sub-Court, Tambaram where M.C.No.48 of 2012 filed by the petitioner is pending.

9. Thus, this Court is not agreeing with the Doctor's Certificate produced and is of the view that the respondent can travel to the Court at Ranipet and appear before the said Court. Further, taking note of the fact the decisions laid down by the Hon'ble Supreme Court stated supra, this Court is inclined to allow the petition.

10. Accordingly, H.M.O.P.No. 790 of 2018 pending on the file of Sub-Ordinate Judge, Poonamallee is withdrawn and transferred to learned Sub-Ordinate Judge, Ranipet. The parties can file their respective pleadings before the said Court, if any and the Court can consider the same and dispose the same as expeditiously as possible. As far as the health condition of the respondent/husband is concerned, if necessary, he can also be referred to a Medical Board, regarding his health condition, if the parties desires so.

11. In the result, the Transfer Civil Miscellaneous Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To:

1.The Subordinate Judge,
Ranipet, Vellore.

2.The Subordinate Judge,
Poonamallee.

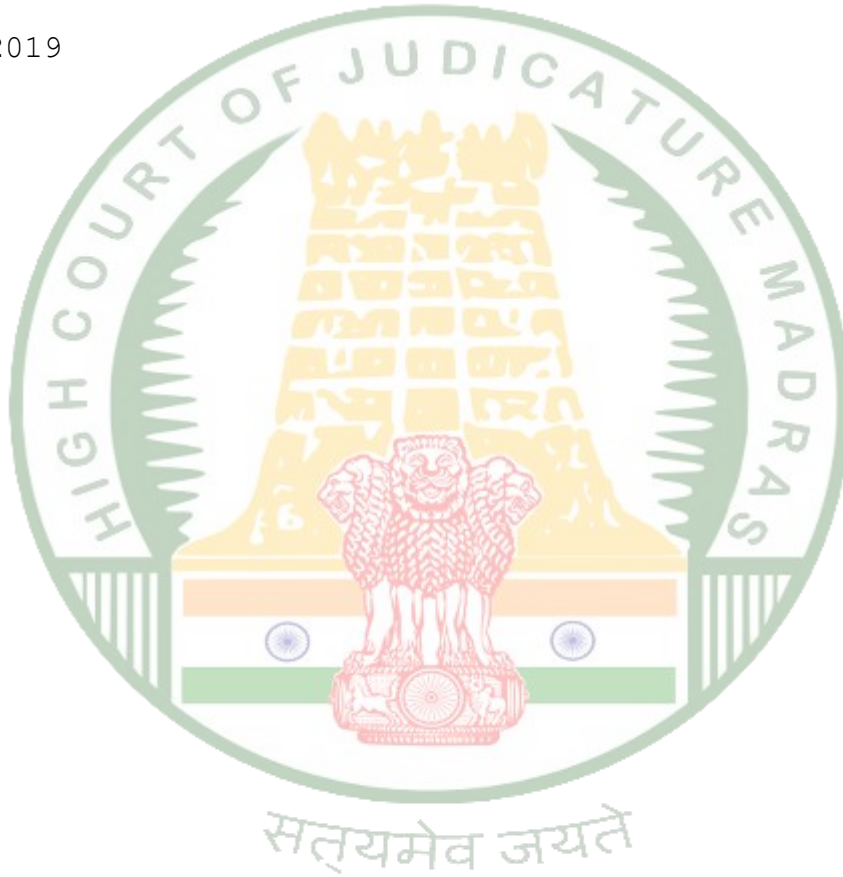
3.The Subordinate Judge, Coimbatore.

4.The Judge,
Family Court, Trichy.

+1cc to Mr.T.P.Prabakaran, Advocate sr.91819

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