

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

TR.C.M.P.No.416 of 2019
and C.M.P.No.11685 of 2019

M.Radha

... Petitioner

Vs.

R.Ashok Kumar

... Respondent

Transfer Civil Miscellaneous Petition is filed under Section 24 r/w Section 151 of the Code of Civil Procedure, to withdraw the H.M.O.P.No.1079 of 2018 from the file of the Family Court at Coimbatore and transfer the same to the file of the Sub Court, Tambaram for joint trial along with H.M.O.P.No.86 of 2019.

For Petitioner : Mr.V.Sekar

For Respondent : Court Notice Served
No Appearance

ORDER

The petitioner has filed this petition, seeking transfer of H.M.O.P.No.1079 of 2018, pending before the Family Court, Coimbatore and transfer the same to the Sub Court, Tambaram for joint trial along with H.M.O.P.No.86 of 2019.

2. The petitioner is the wife and the respondent is the husband. The case of the petitioner is that she got married to the respondent on 12.03.2014, as per Hindu rites and customs at Arulmigu Rathina Vinayagar Temple, R.S.Puram, Coimbatore, out of the wedlock a male child was born to her on 07.09.2015. At the time of marriage the petitioner was working as Computer Engineer in private concern at U.S.A., the respondent was working in a private concern at Coimbatore. During the marriage the petitioner's father had spend for a sum Rs.5,15,000/- for Sridana articles to the respondent and also gave 50 soverings of gold ornaments as Dowry to the marriage as demanded by the respondent and his family members. The petitioner was in her matrimonial home at Coimbatore only for 10 days. Thereafter, the respondent also went to USA on 28.03.2014 and lead the matrimonial life with the petitioner. Thereafter, the respondent had questioned the petitioner that,

have you fallen in love with anyone before the marriage?, Do you have any guys as friends?, have you gone with them outside and stayed with them?, did you have any physical relationship with any one before marriage? and suspected the chastity of the petitioner. The respondent abused and assaulted the petitioner and she sustained grievous injuries. Thereafter, the petitioner came to know the real character of the respondent. The respondent collected all his valuables from the petitioner and thereafter the respondent was not interested to see the petitioner and the child from 24.01.2016 to till date. The petitioner cannot lead a peaceful matrimonial life with the respondent because of his gruesome violent arrogant character. The respondent has no real intention to lead matrimonial life with the petitioner. The respondent filed a petition for Restitution of Conjugal Rights in H.M.O.P.No.1079 of 2018 before the learned Family Court, Coimbatore. Thereafter, the petitioner filed H.M.O.P No.86 of 2019 before the learned Sub-Court, Tambaram for divorce against the respondent.

3. On earlier occasion, viz., 06.06.2019 this Court had ordered notice to the respondent. Further, the notice sent to the respondent/husband was returned with an endorsement 'addressee cannot be located'. Further that, Private Notice was served on 17.09.2019 through the lower court counsel for the respondent, Mr.Abubakar and the notice returned with an endorsement 'Unclaimed'. This Court again on 12.11.2019, directed the Registry to verify whether any vakalat has been filed on behalf of the respondent and directed the Registry to print the name of the respondent and ordered to post the case on 14.11.2019. Today, viz., 14.11.2019 though the name of the respondent is printed in the cause list, there is no representation either in person or through learned counsel and the Registry after verification intimated that no such vakalat has been filed.

4. The petitioner/wife has filed a petition under Section 13(1)(i-a) & 13(1)(iii) of the Hindu Marriage Act - 1955, for divorce from her husband/respondent in H.M.O.P.No.86 of 2019 before the Sub-Court, Tambaram and the respondent/husband filed Restitution of Conjugal Rights Petition in H.M.O.P.No.1079 of 2018 before the Family Court, Coimbatore. Therefore, the petitioner prays for transferring H.M.O.P.No.1079 of 2018 pending before learned Family Court, Coimbatore to the file of the Sub Court, Tambaram for joint trial along with H.M.O.P.No.86 of 2019, so that multiplicity of proceedings can be avoided.

5. The learned counsel for the petitioner submitted that the petitioner is now working in Mudichur, Chennai and without any support she has to take care of her child and she needs somebody's help to travel a long distance i.e., 500 kms from

Tambaram to Coimbatore and then, return to Tambaram and there is also an additional burden i.e., she has to travel with her child.

6. Heard the learned counsel for the petitioner and perused the materials available on records.

7. On perusing the records, it is seen that the petitioner has filed divorce petition and the respondent has filed the petition for Restitution of Conjugal Rights in different Courts. The petitioner/wife is residing at Tambaram, Chennai, it will be reasonable and convenient for her if the case is transferred to Tambaram.

8. This Court is inclined to consider the case of the petitioner on going through the above pleadings and 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 Gupta] and AIR 2002 SC 396 [Sumita Singh Vs. Kumar Sanjay and another].

9. Hence, in view of the above facts and circumstances and taking note of the decisions laid down by the Hon'ble Supreme Court cited supra, this Court is of the view that H.M.O.P.No.1079 of 2018 pending before learned Family Court, Coimbatore shall be transferred to the learned Sub Court, Tambaram, filed by the petitioner/wife.

10. Accordingly, the Transfer Civil Miscellaneous Petition is allowed. The proceedings in H.M.O.P.No.1079 of 2018 is withdrawn from the file of the Family Court at Coimbatore and transferred the same to the file of the Sub Court, Tambaram for joint trial along with H.M.O.P.No.86 of 2019. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

1. The Judge,
The Family Court,
Coimbatore

2. The Sub Judge,
Tambaram.

+1cc to Mr.V.Sekar, Advocate SR.95514

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(CO)
CB(17/12/2019)