

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

TR.C.M.P.No.437 of 2019

and

C.M.P.No.12388 of 2019

S.Praveena

... Petitioner/Respondent

Vs.

R.Arunagiri

... Respondent/Petitioner

Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw and transfer the petition in H.M.O.P.No.196 of 2019 from the file of the Family Judge, Salem, to the file of the Family Court, Chennai.

For Petitioner : Mr.G.Thyagarajan

For Respondent : Mr.A.Karthikeyan

ORDER

This Transfer Civil Miscellaneous Petition has been filed seeking for transfer of H.M.O.P.No.196 of 2019 pending on the file of the Family Judge, Salem, to the file of the Family Court, Chennai.

2. It is stated in the affidavit filed in support of this petition that the marriage between the petitioner and the respondent was solemnized on 01.02.2009 at Arunagiri Perumal Temple, Gajjalnaickenpatty, Salem, as per Hindu Rites and Customs. After the marriage, the respondent and his parents had harassed the petitioner demanding dowry and therefore, the petitioner left the matrimonial home and filed a complaint on dowry harassment, which was numbered as C.C.No.55 of 2013 and has got dismissed on 29.07.2015. The petitioner also initiated Domestic Violence OP for return of articles and properties in D.V.O.P.No.102 of 2013 and the same was dismissed in Trial Court (Learned Additional Mahila Court) on 31.10.2017 and allowed in Appellate Court (Learned Additional District Judge No.1, Salem) vide Crl.A.No.46 of 2018 on 24.01.2019. Further, the petitioner has filed a Miscellaneous Petition vide C.M.P.No.1423 of 2019 in D.V.O.P.No.102 of 2013 for enforcement of the order passed in the Appellate Court and the same is pending for further adjudication

3. It is further stated in the affidavit that the respondent/husband has filed a petition for divorce in F.C.O.P.No.216 of 2010, which was allowed on 27.07.2015. Thereafter, nearly 16 cases have been filed as against the petitioner for several reasons and while that being so, the respondent has filed another petition in H.M.O.P.No.196 of 2019 before the Learned Family Court, Salem, praying for return of his articles. But the petitioner has no articles with her except the "thali" (11 sovereigns) and only the respondent is having 35 sovereigns of jewels that belongs to the petitioner. Moreover, it is stated that the petitioner is currently pursuing LLB final year in Dr.Ambedkar Law College at Chennai and therefore, it is not possible to her to travel every now and then to the Salem Family Court to attend the hearings in H.M.O.P.No.196 of 2019. Hence, she seeks for transfer of the same from the file of the Family Court, Salem, to the file of the Family Court, Chennai.

4. Denying the allegations of the petitioner/wife, the respondent/husband has filed a counter affidavit and submitted that the petitioner has filed a false private complaint against him and his parents for dowry harassment of offence under Section 498(A) before the Judicial Magistrate (Learned Additional Mahila Court), Salem and the same was dismissed on 29.07.2015. After dismissal of the Criminal complaint, the petitioner has made a fresh complaint against him and his parents for return of articles and properties before the Judicial Magistrate (Learned Additional Mahila Court), Salem in D.V.O.P.No.102 of 2013, which also was dismissed on 31.10.2017. Aggrieved by the said order, the petitioner has preferred an appeal in Crl.A.No.46 of 2018 before the Learned Additional District Judge No.1, Salem and the same was allowed on 24.01.2019. As against which, the respondent has preferred a Criminal Revision in Crl.R.C.No.600 of 2019 and the same is pending before this Court.

5. The respondent has further submitted that at the time the petitioner left the matrimonial home, she had taken his 46 sovereigns of gold jewels and therefore, he has filed a petition in H.M.O.P.No.196 of 2019 before the Learned Family Court, Salem, for return of the same. But the petitioner purposely harassing him and drag on the proceedings pending before the Family Court at Salem. Moreover, he has submitted that his parents are senior citizens, his father is aged about 72 years and his mother is aged about 65 years, they are affected by various ailments and they are regularly taking treatment with his assistance. Besides, he is suffering from heart disease and taking treatment in the Government Hospital at Salem. Hence, at this situation, he is not able to travel to Chennai to attend the hearings in H.M.O.P.No.196 of 2019 and therefore, sought for dismissal of this transfer petition.

6. Heard the learned counsels on either side and perused the materials available on record.

7. It is seen that the marriage between the petitioner and the respondent was solemnized on 01.02.2009 and after the marriage, due to misunderstanding between them, the petitioner has taken the respondent's jewels and left the matrimonial home. Therefore, the respondent has filed a petition for divorce in F.C.O.P.No.216 of 2010 which was allowed on 27.07.2015 and thereafter, has filed a petition in H.M.O.P.No.196 of 2019 before the Family Court at Salem for return of his properties taken by the petitioner. Since the petitioner is residing in Chennai and pursuing LLB at Dr.Ambedkar Law College, she expressed her difficulties in traveling to Salem Family Court to attend the hearings in H.M.O.P.No.196 of 2019.

8. Though it has been stated by the respondent that he is suffering from heart disease and taking treatment in the Government Hospital at Salem, the typed-set filed by him shows that he has been treated only as out-patient in the said hospital and there is no material to show that he is severely afflicted by heart disease. Further, when he submitted that he is still taking treatment in the said hospital because of heart disease, he has chosen to file a petition on 16.04.2019 for return of his properties. Hence, this Court is inclined to transfer the HMOP from the file of the Family Court, Salem, to the file of the Family Court, Chennai, as per the convenience of the petitioner/wife.

9. Accordingly, this Transfer Civil Miscellaneous Petition is allowed and the H.M.O.P.No.196 of 2019 pending on the file of the Family Court, Salem, is withdrawn and transferred to the file of the Family Court, Chennai. In case, if the respondent really has some heart disease and if he is not really well, he can file an application to that effect before the Family Court at Chennai and get a relief for dispensing with his appearance by producing relevant documents. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. The Presiding Officer,
Family Court, Chennai.
2. The Presiding Officer,
Family Court, Salem.

+1cc to Mr.G.Thyagarajan, Advocate Sr.80562

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and
C.M.P.No.12388 of 2019

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srg 04/12/2019