

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

Tr.C.M.P.No.333 of 2018

S.Vennila	..	Petitioner
-vs-		
C.Selvaraj	..	Respondent

Transfer Civil Miscellaneous Petition filed under Section 24 of the Code of Civil Procedure to withdraw the case bearing F.C.H.M.O.P.No.46 of 2018 on the file of the Family Court, Dharmapuri and transfer the same to any other Court Salem or Erode.

For Petitioner	::	Mr.M.Senthamizh Selvan
For Respondent	::	No appearance

ORDER

Mrs.S.Vennila, Wife of C.Selvaraj, the respondent herein has filed the transfer civil miscellaneous petition seeking an order for withdrawal of the pending F.C.H.M.O.P.No.46 of 2018 from the file of Family Court, Dharmapuri and transfer the same to the Court at Erode or Salem, on the ground that the petitioner is having one small female child by name Aswini born on 23.12.2015, now aged about 3 ½ years. Due to the disparagement between the petitioner and her husband, she filed H.M.O.P.No.65 of 2017 before the Sub Court, Dharmapuri, which has been transferred to the Family Court, Dharmapuri and re-numbered as F.C.H.M.O.P.No.46 of 2018. On the date of filing the petition for divorce under Section 13(1)(ia) of the Hindu Marriage Act, the petitioner has mentioned the matrimonial address at No.1/172, Thimmanapatti, Kollahalli Post, Denkanikottai Taluk, Krishnagiri District. After sometime, the petitioner left the matrimonial home and started residing with her paternal uncle at Arakasanahalli Village, Pennagaram Taluk, Dharmapuri District. Even in paragraph-6 of the affidavit filed in Tr.C.M.P.No.333 of 2018, the petitioner has mentioned as follows:-

"6. At the time of filing this divorce case the petitioner resided in her matrimonial house. Now she is residing along with her Chiththappa and Chiththi house at Pennagaram Taluk, Dharmapuri and it is very easy to her to attend the case before the Salem or Erode to her."

Even the petitioner is the respondent's uncle's daughter and her husband is the petitioner's aunt's son. Therefore, they are closely related to each other. Hence, by staying with him at

Door No.1/172, Thimmanapatti, Kollahalli Post, Denkanikottai Taluk, Krishnagiri District, she filed the H.M.O.P.No.65 of 2017 before the Sub Court, Dharmapuri, which has been transferred to the Family Court, Dharmapuri and re-numbered as F.C.H.M.O.P.No.46 of 2018. When the address of the respondent at the time of filing the H.M.O.P.No.65 of 2017, now re-numbered as F.C.H.M.O.P.No.46 of 2018 and the present Tr.C.M.P.No.333 of 2018 is one and the same, namely, Door No.1/172, Thimmanapatti, Kollahalli Post, Denkanikottai Taluk, Krishnagiri District, the respondent cannot refuse to accept the notice, consequently, the return of the postal cover with an endorsement "insufficient address" is highly unbelievable and unacceptable. When the petitioner is now residing in her paternal uncle's house with her 3 ½ years old female child, it is difficult to undertake a long journey to the Family Court, Dharmapuri, which is about 90 kms., away from her place. However, if the case is transferred to the Court at Erode, which is 40 kms., or to Salem, which is 50 kms., the petitioner, of course, with difficulty, will be able to appear before any of the Courts.

2. As contended by the learned counsel for the petitioner, the address of the respondent at the time of filing the H.M.O.P.No.65 of 2017, now re-numbered as F.C.H.M.O.P.No.46 of 2018 and this Tr.C.M.P.No.333 of 2018, has been mentioned as follows:-

Mr.C.Selvaraj
Door No.1/172, Thimmanapatti
Kollahalli Post, Denkanikottai Taluk
Krishnagiri District.

Even the return of the postal cover with an endorsement "insufficient address" clearly shows that the respondent has refused to receive the notice. Secondly, when the petitioner is having a female child aged about 3 ½ years, this Court finds no impediment to transfer the case to the Family Court at Erode, which is only 40 kms., away from the petitioner's place. Therefore, the F.C.H.M.O.P.No.46 of 2018 is withdrawn from the Family Court, Dharmapuri and transferred to the learned Family Court Judge, Erode for disposal on merits. Accordingly, Tr.C.M.P.No.333 of 2018 stands disposed of. Consequently, C.M.P.No.8546 of 2018 is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Judge, Family Court, Dharmapuri.

2. The Judge, Family Court, Erode.

+1 cc to M/s.M.Senthamizh Selvan, Advocate Sr.No. 65248

AKM/14.09.19/2P-3C /

Tr.C.M.P.No.333 of 2018