

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2019

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Tr.C.M.P.No.516 of 2018
and C.M.P.No.12579 of 2018

V.Sreelekha

... Petitioner

versus

R.L.Sree Ganapathy

... Respondent

Prayer: Petition is filed under Section 24 of C.P.C., to withdraw H.M.O.P.No.62 of 2018 pending on the file of the Sub Court, Poonamallee and transfer the same to the file of II Additional Family Court, Chennai.

For Petitioner : M/s.J.Sasilie

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 H.M.O.P.No.62 of 2018 pending on the file of the Sub Court, Poonamallee and transfer the same to the file of II Additional Family Court, Chennai.

2. The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was solemnized on 20.08.2015 at Srinivasa Kalyana Mandapam, C.T.H.Road, Padi, Chennai, as per Hindu rites and customs. After the marriage, both the petitioner and respondent were lived together in the matrimonial home at Chennai for a considerable period. After some time, from the date of marriage, difference of opinion arose between the petitioner and respondent, resultantly, the petitioner left the matrimonial home and residing along with her parents.

3. In the meanwhile, the respondent has filed a petition against the petitioner before the Sub Court, Poonamallee, for the relief of annulling the marriage happened

between them on 20.08.2015. The said petition is now pending before the Sub Court, Poonamallee as H.M.O.P.No.62 of 2018.

4. According to the petitioner, she is unemployed lady and not having any sufficient means to travel from her residence to the Sub Court, Poonamallee. Further, after filing the above said petition by the respondent, the petitioner herein has filed one petition before the Family Court at Chennai, for the relief of restitution of conjugal rights. As of now, the said petition is pending before the II Additional Family Court, Chennai as H.M.O.P.No.1135 of 2018. In the said circumstances, if the said petitions are tried separately, there may be a chance for coming out the conflicting decisions and multiplicity of proceedings. Hence, 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. Though notice was served on the respondent as early as on 02.11.2018 and his name is printed in the cause list, there is no representation on behalf of him either in person or through counsel.

7. In the said circumstances, in order to deny the averments made in the affidavit filed by the petitioner, the respondent has not turned up. As per the affidavit filed by the petitioner, as of now, she is residing with her parents. Further, in the affidavit filed by the petitioner she has specifically stated that, she is unemployed lady and not having any sufficient means to travel from her residence to the Sub Court, Poonamallee.

8. 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 the judgments 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.

9. Apart from that, for raising objection in respect to the allegations levelled by the petitioner against the respondent, he has not appeared before this Court, further 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.

10. In this case, even though the petitioner and respondent are residing in Chennai City, it is necessary to see that another one petition in respect to the family dispute of the petitioner and respondent is pending before the Family Court at Chennai. It is true, if both the cases are tried separately, there may be a chance for coming out the conflicting decisions. So, considering the various parameters laid already by the Hon'ble Apex Court as well as by this Court, this Court came to the conclusion that transferring the H.M.O.P.No.62 of 2018 from the Sub Court, Poonamallee to the file of II Additional Family Court, Chennai is necessary for avoiding the above said situation.

11. In the result, the Transfer Civil Miscellaneous Petition is ordered. The petition in H.M.O.P.No.62 of 2018 is ordered to be withdrawn from the file of the Sub Court, Poonamallee and transferred to the file of the II Additional Family Court, Chennai, simultaneously to be tried along with H.M.O.P.Nos.62 of 2018 and 1135 of 2018 in order to avoid multiplicity of proceedings and conflicting judgments being delivered by two different Courts. The Subordinate Judge, Poonamallee, is directed to transmit all the records pertaining to H.M.O.P.No.62 of 2018 to the file of the II Additional Family Court, Chennai, within a period of two weeks from the date of receipt of a copy of this order. On receipt of records, the learned II Additional Judge, Family Court, Chennai, is directed to dispose of the case as expeditiously as possible. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

sri
To

1.The Subordinate Judge, Poonamallee.

2.The II Additional Judge, Family Court, Chennai.

+2cc to M/S.M.Jayaseelan, Advocate Sr.379

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srg 30/01/2019