

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2019

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Tr.C.M.P.No.684 of 2018
and C.M.P.No.16924 of 2018

S.Madhumathi

..

Petitioner

versus

D.Dhanasekaran

..

Respondent

Prayer: Petition is filed under Section 24 of C.P.C., to withdraw H.M.O.P.No.348 of 2018 pending on the file of the Additional Family Court, Coimbatore and transfer the same to the file of the Sub Court, Sankari, Salem District.

For Petitioner : Mr.K.Kumaraguru
for M/s.S.Nandhini

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 the case i.e. H.M.O.P.No.348 of 2018 pending on the file of the Additional Family Court, Coimbatore and transfer the same to the file of the Sub Court, Sankari, Salem District.

2. The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was solemnized on 07.06.2012 at S.R.Mahal, Pusur Puthupalayam, Coimbatore District, as per Hindu rites and customs. After the marriage, both the petitioner and respondent were lived together in the matrimonial home at Hosur for a considerable period. Due to the wedlock, on 29.06.2013, the petitioner gave birth to one female child, namely, Deeksa and as of now, the said child is under the care and custody of the petitioner. After gave birth to the above said child, difference of opinion arose between the petitioner and respondent, resultantly, the petitioner left the

matrimonial home and residing along with her parents at Elampillai situated near to Sankari, Salem District.

3. After leaving the matrimonial home by the petitioner, the respondent has filed a petition before the Additional Family Court, Coimbatore, under Section 13(1)(ia) of the Hindu Marriage Act, 1955, for annulling the marriage happened between them on 07.06.2012. As of now, the said petition is pending before the Additional Family Court, Coimbatore, as H.M.O.P.No.348 of 2018. In the said circumstances, the petitioner has come out with the present Transfer Civil Miscellaneous Petition for the relief stated earlier in the first paragraph of this order.

4. According to the petitioner, she is residing at Elampillai along with her parents, the distance between her parents residence and Coimbatore is about 200 kilometers, it is difficult for her to attend the Court proceedings at Coimbatore along with the child. Further, she is not having any independent income and she is depending on her parents for her day-to-day needs and for litigation expenses.

5. In respect to the respondent, after receiving the Court notice, till date, he has not appeared before this Court either in person or through counsel. It shows that the respondent is not having any objection in respect to this petition.

6. In the said circumstances, as per the affidavit filed by the petitioner, as of now, she is residing with her parents in Elampillai, without any independent income, she has specifically stated that, she is depending on her parents for her day-to-day needs. Further, being a lady, it is very difficult for her to attend the Court proceedings at Coimbatore.

7. 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.

8. Apart from that, for raising objection in respect to the allegations levelled by the petitioner against the respondent, the respondent 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.

9. In the result, the Transfer Civil Miscellaneous Petition is ordered. The petition in H.M.O.P.No.348 of 2018 is ordered to be withdrawn from the file of the Additional Family Court, Coimbatore and transferred to the file of the Sub Court, Sankari, Salem District. The Additional Judge, Family Court, Coimbatore, is directed to transmit all the records pertaining to H.M.O.P.No.348 of 2018 to the file of the Sub Court, Sankari, Salem District, within a period of two weeks from the date of receipt of a copy of this order. On receipt of records, the learned Subordinate Judge, Sankari, Salem District, is directed to dispose of the case as expeditiously as possible. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

sri

To

1.The Additional Judge, Family Court, Coimbatore.

2.The Subordinate Judge, Sankari, Salem District.

+1cc to M/s.Nandhini, Advocate SR.No.7871

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PPA (CO)
GMY (22/02/2019)

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