

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.532 of 2019

and

C.M.P.No.14788 of 2019

Mrs.Padmini

... Petitioner / Respondent

Vs.

Mr.Naresh Kumar

... Respondent / Petitioner

Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw the Suit in O.S.No.244 of 2017 from the file of the II Additional Family Court, Chennai and transfer the same to the file of the Sub-Court, Tirupattur, Vellore District, to try along with H.M.O.P.No.116 of 2018 on the file of the Sub-Court, Tirupattur, Vellore District.

For Petitioner : Mr.P.S.Kothandaraman

For Respondent : Mr.E.Reegan Amarasekaran

ORDER

The petitioner/wife has filed this petition, seeking transfer of O.S.No.244 of 2017 from the file of the II Additional Family Court, Chennai, to the file of the Sub-Court, Tirupattur, Vellore District, to be tried along with H.M.O.P.No.116 of 2018.

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 31.01.2017 at M/s.Captain Illam, Kannammal Street, Virugambakkam, Chennai, as per Hindu Rites and Customs. The respondent is working as a Software Engineer at Chennai and both the petitioner and respondent were living at Chennai. Due to matrimonial dispute, the petitioner was thrown out from the matrimonial home and now she is residing at Tirupattur, Vellore District, with her parents.

3. It is also stated in the affidavit that the respondent has filed a Suit for declaration in O.S.No.244 of 2017 before the II Additional Family Court, Chennai, declaring that the marriage held on 31.01.2017 between himself and the petitioner and subsequent registration of the marriage vide Certificate No.54 of 2017 as null and void. Since the petitioner is residing at Tirupattur and depending upon the income of her father, she could not travel to Chennai to attend the hearings in O.S.No.244 of 2017, therefore she has filed this petition, seeking transfer of O.S.No.244 of 2017 from the file of the II Additional Family Court, Chennai, to the file of the Sub-Court, Tirupattur, Vellore District.

4. It is further stated in the affidavit that the petitioner has filed a petition for Restitution of Conjugal Rights in H.M.O.P.No.116 of 2018 before the Sub-Court, Tirupattur, Vellore District. Due to Advocates' boycott, her counsel was not able to appear before the Court for the hearing on 02.07.2019, therefore the said petition was dismissed for non-prosecution on the same day. However, on the next day, she filed an application for restoration in I.A.No.1 of 2019 and the same is pending. In the meantime, she has also filed a petition for maintenance in M.C.No.14 of 2018 before the Judicial Magistrate No.1, Tirupattur, Vellore District and the same is also pending. Moreover, it is stated that earlier the petitioner had filed a petition in Tr.C.M.P.No.171 of 2018 before this Court, which was dismissed for non-prosecution on 14.08.2018. Since it has been dismissed for non-prosecution, the question of Res judicata would not apply and therefore, she seeks for transfer of O.S.No.244 of 2017 pending on the file of the II Additional Family Court, Chennai, to the file of the Sub-Court, Tirupattur, Vellore District.

5. Denying the allegations of the petitioner, the respondent/husband has filed a counter affidavit submitting that no marriage was held on 31.01.2017 at M/s.Captain Illam, Kannammal Street, Virugambakkam, Chennai, between himself and the petitioner and only the engagement was held on 01.02.2017 in Krishnagiri District. After the engagement, since the respondent was informed that the petitioner had eloped with one Dhaneshwaran on 31.03.2017 and therefore, a complaint was filed before the Judicial Magistrate, Tirupattur, vide FIR.No.61 of 2017 on 01.04.2017 and after registration of the FIR, she was returned to her home, he was in confusion. But again, he was informed that the petitioner absconded with the said Dhaneshwaran and in pursuance of which, the 2nd FIR.No.262 of 2017 has been registered on 06.05.2017, consequently H.C.P.No.1036 of 2017 has been filed before this Court by her father.

6. It has been further submitted in the counter affidavit that the petitioner's father intentionally suppressed the fact of the petitioner's love affair and fraudulently secured the respondent's sign in the marriage registration application. Hence, as per the documents, there was only a registration of marriage and it is not a valid marriage. Moreover, it is submitted that on the first occasion, the petitioner had appeared before the II Additional Family Court, Chennai, to attend the hearing in O.S.No.244 of 2017, but thereafter she did not appear and therefore, an exparte order was passed on 26.04.2018 in favour of the respondent. In addition, it is submitted that the petitioner had not even followed her own Restitution case filed in her own Town and therefore, the H.M.O.P.No.116 of 2018 was dismissed for non-prosecution. Hence, there is no case pending in Tirupattur and sought for dismissal of this transfer petition.

7. Heard the learned counsel for the petitioner and the learned counsel for the respondent, and perused the materials available on record.

8. As pointed out by the respondent, it is seen that the marriage between the petitioner and the respondent was held on 31.01.2017 at M/s.Captain Illam, Kannammal Street, Virugambakkam, Chennai, and the same was registered vide Certificate No.54 of 2017. But they had gone to get blessings of their leader. Originally, the marriage was fixed to be held on 2nd, 3rd and 4th September of 2017, but when they went to invite and get the blessings of their party leader, the petitioner's father had forced them to register before the Sub-Registrar as if the marriage has been held in the house of their leader. After the marriage, the petitioner/wife eloped with one Dhaneshwaran and therefore, the respondent/husband has filed a Suit in O.S.No.244 of 2018 before the II Additional Family Court, Chennai, seeking for a declaration, declaring that the alleged marriage held on 31.01.2017 between himself and the petitioner and subsequent registration of the marriage vide Certificate No.54 of 2017 as null and void. The petitioner appeared before the Family Court on 07.02.2018 and the case was posted for filing counter on 03.03.2018. It was further stated by the counsel that the petitioner has filed a petition in Tr.CMP.No.171 of 2018 before this Court on 22.02.2018 to withdraw the O.S.No.244 of 2018 from the file of the II Additional Family Court, Chennai, and transfer the same to the file of the Sub-Court, Tirupattur, Vellore District. Subsequent to the filing of O.S.No.244 of 2018, the petitioner is alleged to have filed H.M.O.P.No.116 of 2018 before the Sub-Court, Tirupattur, Vellore District, for Restitution of Conjugal Rights. In the meanwhile, an exparte decree was passed in the

Suit in O.S.No.244 of 2018 on 26.04.2018, and the said Tr.CMP.No.171 of 2018 was dismissed for non prosecution on 14.08.2018 by this Hon'ble Court. Thereafter, the H.M.O.P.No.116 of 2018 also came to be dismissed for non-prosecution on 02.07.2019 and subsequently, the petitioner has filed an application for restoration in I.A.No.1 of 2019 and the same is pending before the Sub-Court, Tirupattur, Vellore District.

9. It is seen from the typed-set of papers filed by the respondent that on 05.04.2017, the petitioner/wife has given her statement before the Judicial Magistrate, Tirupattur, wherein, she has submitted that she is studying ECE at Andal Alagar Engineering College in Chennai and her parents had approached her for getting married with the respondent and she had informed that she was not interested to marry the respondent and she did not want to live with him. But her parents without listening to her words had solemnized the marriage with the respondent. After the marriage, she had informed the respondent that she does not want to live with him, which was informed to her parents by the respondent. Her parents again advised her and compelled her to live with the respondent and therefore, she left the house on her own. After she came to know that a compliant has been registered by her father that she was missing, she appeared before the Tirupattur Police Station on 05.04.2017 at 11.00 a.m., and given a statement and informed that no body had abducted her and she does not want to go along with her parents or the respondent and she wanted to continue her studies staying in her college hostel.

10. This Court is not inclined to go into the arguments stated in main case as it is only a Transfer Civil Miscellaneous Petition. It is seen that the petitioner has already filed a transfer petition for transferring the Suit, but she did not pursue the same. Therefore, it was dismissed for non prosecution on 14.08.2018. Further, the Restitution petition filed by the petitioner has also been dismissed for non prosecution on 02.07.2019. The petitioner has submitted that she has filed restoration application in I.A.No.1 of 2019 before the Sub-Court, Tirupattur, but there is no material produced to show that she has filed restoration petition and the same is pending before the Sub-Court, Tirupattur. Moreover, the petitioner has submitted that she was studying ECE at Andal Alagar Engineering College in Chennai and to continue her studies, she got admitted in a college at Vellore District, but there is no material or record to support the same. The apprehension of the respondent that the father of the petitioner is an influenced person belonging to a political party can harm him who had earlier forced him to marry the petitioner on the next day of his engagement is also to be taken note of. Hence, in the absence of production of any material to show that she has filed a

restoration application and she is studying at a college in Vellore District, this Court is not inclined to transfer the O.S.No.244 of 2017 pending on the file of the II Additional Family Court, Chennai, to the file of the Sub-Court, Tirupattur, Vellore District.

11. Accordingly, this Transfer Civil Miscellaneous Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(CS-IX)

True Copy

Sub-Assistant Registrar

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To

1. The Presiding Officer,
II Additional Family Court, Chennai.
2. The Presiding Officer,
Sub-Court, Tirupattur,
Vellore District.

+1 CC to M/s. Law Vision, Advocate sr 81228
+1 CC to Mr.D. Padmanabhan, Advocate sr 81350.

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and
C.M.P.No.14788 of 2019

PPA(CO)
SP(11/12/2019)