

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2019

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

TR C.M.P. No.594 of 2019
and
C.M.P.No.17153 of 2019

Srimathi

... Petitioner

Vs.

M.Kamalakannan @ Saravanakumar

... Respondent

PRAYER: Transfer Civil Miscellaneous Petition filed under section 24 of C.P.C., to withdraw H.M.O.P.No.121 of 2019 on the file of IIInd Additional Sub Court, Coimbatore and to transfer the same to the learned Sub Court, Udumalpet to be tried along with H.M.O.P.No.197 of 2018.

For Petitioner : Mr.D.R.Arun Kumar

For Respondent : Notice served - No appearance

ORDER

This Transfer Civil Miscellaneous Petition is filed seeking to withdraw and transfer H.M.O.P.No.121 of 2019 on the file of the IIInd Additional Sub Court, Coimbatore to Sub Court, Udumalpet to be tried along with H.M.O.P.No.197 of 2018.

2. The case of the petitioner is that marriage between the petitioner and the respondent was solemnized on 26.06.2017 as per Hindu rites and custom. After marriage the respondent/husband was in the habit of teasing and harassing the petitioner and he was of a peculiar character with abnormal behaviour, treated the petitioner in a cruel manner and tortured her in many ways which cannot be expressed by words. Hence the petitioner filed a divorce petition in H.M.O.P.No.197 of 2018 before the Sub Court, Udumalpet. The petitioner already had many

life threats because of the respondent and to that effect she has filed a complaint in FIR No.26 of 2017 on the file of the AWPS, Perur. As a counter blast the respondent/husband has filed a petition in H.M.O.P. No. 121 of 2019 on the file of the IInd Additional Sub Court, Coimbatore for restitution of conjugal rights. Hence, she seeks transfer of the case filed by the husband from IInd Additional Sub Court, Coimbatore to Sub Court, Udumalpet to be tried along with H.M.O.P.No.197 of 2018.

3. It is stated by the petitioner that at present, she is living with her aged parents at Udumalpet. According to her, she is depending upon her parents. Since the respondent has filed the HMOP for restitution of conjugal rights before the IInd Additional Sub Court, Coimbatore, it will be difficult for her to travel along with her aged parents for each and every hearing. Whereas, if the HMOP No.121 of 2019 filed by the respondent is transferred to the file of the Sub Court, Udumalpet, it will be easy and convenient for her to take care of all the matters.

4. This Court ordered notice and the same was served on the respondent. Till date, the respondent has not filed any vakalat on behalf of him for conducting the case. In spite of giving sufficient opportunities, he has not appeared in person or through his counsel. Hence, this Court is inclined to dispose of the matter on merits in accordance with law.

5. Heard the learned counsel for the petitioner and perused the available materials on record. None appears on behalf of the respondent.

6. This Court is of the view that if both the petitions are allowed to be proceeded independently, it will result in conflicting decisions. Further, as stated by the petitioner has to travel for each and every hearing along with the aged parents and considering the well settled law that whenever, the transfer application is filed in matrimonial disputes, the convenience of the wife shall be given preference, as held by the Hon'ble Supreme Court in the Judgments reported in 2008 (9) SCC 353 [Arti Rani @ Pinki Devi and another Vs. Dharmendra Kumar Gupta] and AIR 2002 SC 396 [Sumita Singh Vs. Kumar Sanjay and another], this Court feels it appropriate to withdraw and transfer H.M.O.P.No.121 of 2019 from the file of II Additional Sub Court, Coimbatore to Sub Court, Udumalpet to be tried along with H.M.O.P.No.197 of 2018. The II Additional Sub Court, Coimbatore

is directed to withdraw and transfer the said petition within a period of six weeks from the date of receipt of a copy of this order. Accordingly, the Transfer Civil Miscellaneous Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. The II Additional Sub Court,
Coimbatore.
2. The Sub Court,
Udumalpet.

+1cc to M/s.D.R.Arunkumar, Advocate Sr.97267

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and
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srg 31/12/2019