

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2019

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

TR.C.M.P.No.626 of 2019
and
C.M.P.No.18101 of 2019

Kulanthai Fathima

... Petitioner

Vs.

M.Babu

... Respondent

Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw O.S.No.200 of 2018, from the file of the District Munsif Court, Kangayam and transfer the same to the file of the Subordinate Court, Dharapuram.

For Petitioner : Mr.N.Ramesh

For Respondent : Mr.V.Ashok Kumar

ORDER

The petitioner has filed this petition, seeking transfer of O.S.No.200 of 2018 pending on the file of the District Munsif Court, Kangayam and to transfer the same to the file of the Subordinate Court, Dharapuram.

2. The petitioner is the wife and the respondent is the husband. The case of the petitioner is that she got married to the respondent on 25.07.2011 as per the Islamic Tradition and customs, at Mosque, Pallapatty, Chinna Dharapuram. Their marriage was a love cum arranged intercaste marriage, the name of the petitioner was changed from Kulanthai Fathima into Fathima in Tamil Nadu Gaze by the respondent and out of their wed lock a female child was born on 19.05.2004. After the marriage there was a lot of differences in the behaviour of the respondent and his family members. Further that, the respondent and his family members were ill-treated, harassed and humiliated her under the guise of demanding dowry. The respondent had illegal intimacy with one Ramathal who was a widow and having two children as she was working in the shop of the respondent. The petitioner has given a complaint before the

police against the respondent and witnessed the behaviour of the respondent and the said Ramathal. The respondent abused her with filthy language and also assaulted her with hands and she sustained grievous injuries. The petitioner gave birth for another female child on 19.08.2018 but the respondent did not come and see the petitioner and the child. When she called the respondent through phone he informed that he getting arrange for second marriage to another girl in Muslim Community with huge dowry. The respondent has not interested to live with the petitioner and their children. Thereafter, the petitioner filed maintenance petition in M.C.No.29 of 2018 before the learned Judicial Magistrate, Dharapuram against the respondent/husband.

3. The respondent/husband filed a Suit in O.S.No.200 of 2018, before the District Munsif Court, Kangayam to declare the marriage between the petitioner and the respondent on 26.07.2011 as null and void.

4.The petitioner/wife denies all the allegations as false and frivolous and she has filed a maintenance petition in M.C.No.29 of 2018 before the Judicial Magistrate, Dharapuram for her and her daughters. The husband/respondent has not shown any interest in taking her back. Further, the petitioner states that the respondent/husband filed a O.S.No.200 of 2018, for declaration to declare the marriage between the petitioner and the respondent as null and void. Therefore, the petitioner prays for transferring O.S.No.200 of 2018 pending before the District Munsif Court, Kangayam to the Subordinate Court, Dharapuram, so that multiplicity of proceedings can be avoided.

5. The learned counsel for the petitioner submitted that the petitioner is not employed and has no independent income, she cannot even meet out the travel expenses to attend the Court proceedings at Kangayam and there is also a life threat made by the respondent on various occasions.

6.The learned counsel for the respondent made objection to transfer the case from Kangayam to Dharapuram.

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

8.On perusing the records, it is seen that the petitioner has filed a petition for maintenance and the respondent has filed a Suit for declaring the marriage held on 26.07.2011 as null and void, in different Courts. Since, the petitioner/wife is residing at Dharapuram, it will be reasonable and convenient for her, if the case is transferred to Dharapuram.

9. It is 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].

10. Hence, in view of the above facts and circumstances and also taking note of the judgment Hon'ble Supreme Court cited supra, this Court is of the view that O.S.No.200 of 2018, which is pending before the District Munsif Court, shall be transferred to the Subordinate Court, Dharapuram.

11. Accordingly, the present Transfer Civil Miscellaneous Petition is allowed. The proceedings in O.S.No.200 of 2018, which is pending before the District Munsif Court, Kangayam is withdrawn and transferred to the Subordinate Court, Dharapuram for disposal. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CJ Conf.)

//True Copy//

Sub Assistant Registrar

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To

1.The District Munsif, Kangayam.

2.The Subordinate Judge, Dharapuram.

+1cc to Mr.N.Ramesh, Advocate, S.R.No.91074

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MP(CO)
CS/31/12/2019