

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2019

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tr.CMP. No.642 of 2019
and CMP.No. 18523 of 2019

S. Tamilzharasi

... Petitioner

Vs.

G. Sakthivel

... Respondent

PRAYER: Transfer Civil Miscellaneous Petition filed under Section 24 of Civil Procedure Code, to withdraw the proceedings in H.M.O.P.No.3563 of 2018 on the file of the Hon'ble II Additional Family Court at Chennai and transfer the same to learned Sub Court Judge, Mayiladuthurai.

For Peititoner : Mr.M.Velmurugan

For Respondent : No appearance

O R D E R

The petitioner/wife has filed this Transfer Civil Miscellaneous Petition seeking for withdrawal of proceedings in H.M.O.P.No.3563 of 2018 pending on the file of the learned II Additional Judge, Family Court at Chennai and transfer the same to the learned Sub Court Judge, Mayiladuthurai.

2. The case of the petitioner is that she got married to the respondent/husband on 24.01.2016 at Hamara Thirumana Mahal, Sivan Therkku Veethi, Poraiyaar, Tharangambadi Taluk, Nagapattinam District, Tamil Nadu as per the Hindu rites and customs.

3. The respondent/husband has filed H.M.O.P.No.3563 of 2018 on the file of learned II Additional Family Court, Chennai, seeking for dissolving the marriage between the parties that took place on 24.01.2016 at Nagapattinam.

4. The learned counsel for the petitioner submits that it is the case of the respondent/husband that the petitioner/wife was not in a position to go with the family life on one hand and on the other, it is the only reason for the husband to file the

suit for seeking divorce. The petitioner's parents had come to Chennai and taken the daughter and they also requested to return the jewels, which has been given to him at the time of marriage for petitioner's hospital expenditure. As the petitioner was not interested in living with him at Chennai, she also filed a police complaint against the respondent's family. The petitioner further states that the respondent/husband is very well aware that the petitioner/wife is residing at Tharangambadi. In spite of the same, the respondent has filed the petition before the II Additional Family Court at Chennai only to harass the petitioner/wife. Hence, the petitioner seeks for transferring the same.

5. The learned counsel for the petitioner also further states that the petitioner has also filed a petition before the Sub Court Judge, Mayiladuthurai in H.M.O.P.No.167 of 2019 seeking Restitution of Conjugal Rights and M.C.No.9 of 2019 before the same Court seeking for Maintenance under Section 125 of Cr.P.C. The learned counsel for the petitioner also submits that the petition filed by the respondent/husband can be transferred and tried along with the petition filed by the petitioner/wife seeking Restitution of Conjugal Rights and Maintenance before the Sub Court Judge, Mayiladuthurai.

6. Notice was issued to the respondent through Court on 23.09.2019. But no one is appearing for the respondent. This Court directed the Registry on 14.10.2019 to verify whether any vakalat has been filed on behalf of the respondent and if it is not so, Registry was directed to print the name of the respondent. Registry has verified and stated that no vakalat has been filed on behalf of the respondent and hence the name of the sole respondent G.Sakthivel, S/o. Gopal, 117/139, Othavads Street, Kodambakkam, Chennai -24 has been printed in the cause list.

7. When the matter was taken up for hearing, no one is appearing for the respondent either in person or through counsel. Hence, the matter is decided on merits.

8. 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]. Further, the petitioner has also given valid and sufficient reasons to transfer the case in H.M.O.P.No.3563 of 2018 from the file of the learned II Additional Judge, Family Court, Chennai to the file of the learned Sub Court Judge, Mayiladuthurai where M.C.No. 9 of 2019 filed by the petitioner is pending.

Accordingly, this Transfer Civil Miscellaneous petition is allowed. The proceedings in H.M.O.P.No.3563 of 2018 pending on the file of the II Additional Family Court, Chennai, is transferred to the file of the Sub Court, Judge, Mayiladuthurai to be tried along with H.M.O.P.No.167 of 2019 and M.C.No.9 of 2019. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The II Additional Judge, Family Court,
Chennai.
2. The Sub Judge,
Mayiladuthurai.

+1cc to Mr.M.Velmurugan, Advocate Sr.88611

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srg 27/12/2019