

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2019

CORAM

THE HON'BLE Mrs. JUSTICE V. BHAVANI SUBBAROYAN

Tr.CMP.No. 738 of 2019
and
CMP No. 20724 of 2019

D. Aishwariya

...Petitioner

vs

S.K Ramesh Babu

... Respondent

Prayer: Transfer Petition is filed under Section 24 of the Civil Procedure code praying to withdraw H.M.O.P.No.21 of 2019 pending on the file of the Subordinate Judge's Court at Neyveli and transfer the same to the file of Subordinate Judge's Court at Jayankondam.

For Petitioner : Mr. T.L. Thirumalaisamy

For Respondent : Mr. S. Kaithamalaikumaran

O R D E R

The petitioner herein is the wife, who is praying to withdraw H.M.O.P.No.21 of 2019 pending on the file of the Subordinate Court at Neyveli and transfer the same to the file of Subordinate Court at Jayankondam.

2. The case of the petitioner is that she married the respondent on 12.06.2013 at Ramji Mahal at Uraiyur as per Hindu customs and rituals and the same has been registered with the Marriage Registrar on 19.08.2013. After the marriage, both the petitioner and the respondent lived at Neyveli and had a baby boy named Sirtharan who was born and now he is aged about 5 years. Since the respondent's family compelled the petitioner to bring 15 sovereigns of gold jewellery and also Rs.5,00,000/- and the same could not be complied with by the petitioner's parents, the petitioner was threatened that if she does not bring the said amount and jewellery, the respondent's parents will not allow her to stay in the house and subsequently along with the child she was driven out of the house in the year 2015.

3. The petitioner had filed Maintenance Petition. The respondent immediately filed a Divorce Petition before the Sub Court, Neyveli in HMOP.No.49 of 2015. When the matter was referred to the Lok Adalat, both the parties were given counselling. In the Lok Adalat, since the respondent gave a statement that he would not demand dowry, the petitioner withdrew the Maintenance petition filed in the Family Court. After that, they lived together for sometime. Thereafter respondent's family again tortured the petitioner for filing the Maintenance Petition and also saying that she was with the respondent only for money. When the petitioner requested the respondent to take admission of their child in the school, respondent instead asked her to bring money from her parent's house for their son's education.

4. During October 2017, the respondent's family also demanded a sum of Rs.5,00,000/- and 15 sovereigns of gold jewellery saying that she will be allowed to stay in the house only if she brings the above said money and jewellery and as the petitioner could not comply with the conditions, she along with her son were again driven out of the house. Since then the petitioner is living in her parent's home along with her son. The son is studying in UKG at Jaihindh International Vidyalaya, Jayankondam.

5. The respondent is doing coal business by buying waster coal from Neyveli Lignite Coal Mines and sells it to the retail shops. The respondent owns a JCB Vehicle and two houses at Mandarakuppam. He also owns two cars and earns a lot of money. As the petitioner is unemployed and she finds it difficult to pay for her son's education, she filed a complaint under Domestic Violence Act in DVC No.5 of 2019 before the Judicial Magistrate Court No.1, Jayankondam and the same is pending for consideration. The respondent filed divorce petition in HMOP.No.21 of 2019 pending on the file of Sub-court, Neyveli. The petitioner is finding it difficult to travel along with her son from Jayankaondam to Neyveli to attend the Court proceedings. As the husband appearing before the Judicial Magistrate Court No.1, Jayankondam in DVC case, he can also attend the case of divorce Petition filed by him if it is transferred to Sub Court, Jayankondam. Hence the petitioner seeks to withdraw the HMOP.No.21 of 2018 pending before the Neyveli court and to transfer the same to Sub-Court, Jayamkondam

6. The respondent filed a counter affidavit denying the averments in the petition. He also submitted that the he has never demanded for dowry and also the jewellery or money. The petitioner left the house on her own with the child at the instigation of her parents and had filed maintenance petition. It is the habit of the petitioner leaving the matrimonial house frequently without any valid reason and stay at her parent's

house and the petitioner's parents had made him to file divorce petition in HMOP No.49 of 2015 before the Sub- Court, Neyveli. The consent order was passed in maintenance petition at Sub Court Neyveli subsequent to the mediation arrived at between the parties consequent to which HMOP.No.49 of 2015 was closed. Subsequently the petitioner was made to live a peaceful life. However, even after this, the petitioner began to accuse the respondent and his parents and also wanted his parents should go out of the home but the respondent wanted to stay along with his parents. Thereafter she left the matrimonial home without any valid reasons along with her son and stayed with the parent's. Whenever the respondent pleaded to meet the minor son, the parents' of the petitioner refused to allow him to see his son. She also gave a police complaint in the All Women Police Station, Jayakondam under Section 498 (A) Indian Penal Code in the month of June 2019. The respondent states that there is no possibility for re-nuion and he only prays for visiting his son and prays to direct the petitioner wife to show the son to the respondent when the matter is taken up for hearing.

7. In view of the above, the respondent can file appropriate petition before the appropriate Court seeking for visitation right and the petitioner wife is directed to show the child to the husband when he is also having equal rights as the petitioner who is also a natural guardian of the child. The respondent's counsel has no serious objection for the same.

8. In view of the above facts and further the learned counsel for the petitioner has also agreed to show the child to the father on the second hearing of the said proceedings after being renumbered, this Court is inclined to allow the transfer CMP 738 of 2019 filed by the petitioner. Ordered accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Judge,
Neyveli.

2.The Subordinate Judge,
Jayankondam.

+1cc to Mr.T.L.Thirumalaisamy, Advocate Sr.93577
+1cc to Mr.S.Kaithamalai Kumaran, Advocate Sr.93674

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