

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2019

CORAM

THE HON'BLE Mrs. JUSTICE V. BHAVANI SUBBAROYAN

Tr.CMP.No.s 735 and 736 of 2019
and
CMP Nos.20668 and 20669 of 2019

N. Saroja Devi

..Petitioner in both petitions

vs

1. Balamurali @ Easakimuthu,

2. P. Muthukumar

.. Respondents in both petitions

Prayer: Transfer Petition is filed under Section 24 of the Civil Procedure code praying to withdraw and transfer the G.W.O.P.No.3077 of 2019, on the file of Vth Additional Family Court at Chennai to the Family Court, Kanniyakumari District at Nagarkovil.

Prayer: Transfer Petition is filed under Section 24 of the Civil Procedure code praying to withdraw and transfer the H.M.O.P.No.3052 of 2019, on the file of Vth Additional Family Court at Chennai to the Family Court, Kanniyakumari District at Nagarkovil.

For Petitioner in both Tr.C.M.Ps : Mr. K. Krishnan

For Respondents in both Tr.C.M.Ps : Mrs. R. Mahalakshmi

O R D E R

The petitioner herein is the wife who seeks to withdraw HMOP.No.3052 of 2019 pending before the VI Additional Family Court at Chennai, and transfer the same to the file of Family Court of Kanniyakumari District at Nagarkovil.

2. The case of the petitioner is that she got married to the first respondent herein on 10.04.2005 at Raja Thirumana Mandapam, Krishnancoil, Nagercoil, Kanniyakumari District, as per Hindu Customs and rites. She was living with the respondent at Chennai and blessed with a male child by name Gnanasekaran was born on 20.05.2006 who is now 13 years old. The first respondent and the petitioner herein were living cordially but in the month of March 2019, the petitioner was forcibly thrown out from the matrimonial home at Chennai due to the ill-advise of her husband's relatives with the intention to

extract money from her widowed mother. The petitioner also submits that the respondent always restricted her from talking to anyone in the neighborhood at Chennai. Since the petitioner was chased away from her matrimonial house, she is presently living with her widowed mother at Nagarkoil. She is not employed and she is dependant on her widow mother. She cannot travel from Nagarkoil to Chennai which is 703 Kilometers away and there is no one to accompany her to travel with her to attend the Court proceedings. Due to financial constraints, she is not in a position to pay the fair for her travelling and there is no accommodation in Chennai. On the other hand, the husband has free travel pass in train. Hence there is no problem for the first respondent to attend court proceedings in Nagercoil Court. She also further submits that no prejudice will be caused to the respondent if the OP pending before the V the Additional Family Court at Chennai in H.MO.P.No.3052 of 2019 is transferred to Nagarkoil, Kanniyakumari District.

3. Mrs. R. Mahalakshmi, the learned counsel appearing for the respondents would submit that he had preferred the divorce petition on the ground of cruelty and ill-character before the Family Court at Chennai and also he filed a Petition under the Guardian and Wards Act which is numbered as GWOP.No.3077 of 2019 and the same is pending before the said Court. He filed the said divorce petition once he found that his wife is having illegal relationship with one Muthukumar. The wife left the matrimonial house on 28.03.2019 on her free will and got with her family members when the brothers and paternal uncle came down to Chennai at the request of the respondent's husband, he informed the family members regarding the said illicit affair of the wife. He had further submitted that the son studying in IXth Standard and as he is the custodian as the father, the respondent has to take care of all the needs of the son who is studying in the school, clean the house, attend to the day to day needs of the son, and then go to his work. In such a situation, if the case is transferred from Chennai to Nagarcoil, he and his school going son will suffer a lot and the studies of the son will be get disturbed and therefore considering the interests of the minor son and his studies together with the fact that the wife left her son and the first respondent on her own free will. Hence praying for dismissing he said transfer cmp filed by the petitioner wife.

4. The learned counsel for the husband submits that he is ready and willing to pay the travelling expenses to the petitioner wife and interests of father and son have to be taken into account while deciding the case. In the petition filed by the wife for transfer, in the affidavit it has been stated that only on the ground of demand of money by the respondent there was a dispute and the husband has chased her out of the matrimonial house. She has not stated anything about the son. No whisper about the GWOP filed by the husband pending in the

very same court. The wife has not come to this Court with clean hands. The wife has sought for transfer of both the petitions to Kanyakumari. But the Guardian Op has to be filed where the minor is residing and accordingly husband has filed the GWOP.No.3077 of 2019 before the Court at Chennai and there is no question of transfer of the same to the Court at Kanyakumari as per the wishes of the wife. The child is studying in IX Standard who will be facing his final Board Examination in the next year and the interest of the child has to be taken into account and the father cannot leave the son in the custody of third person and attend the Court proceedings at Kanyakumari. The wife is staying at Kanyakumari and she can travel to Court at Chennai and the husband is ready and willing to pay the travelling expenses and other expenses if any.

5. This Court is not expressing any opinion on the allegations between the parties and they are free to defend their case when the matter is taken up for trial. In view of the above, the Transfer Petitions filed by wife are dismissed. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

Mrn

TO

The V Additional Family court,
Chennai.

+lcc to Mr.K.Krishnan, Advocate, S.R.No. 92447

+lcc to Mr.R.Mahalakshmi, Advocate, S.R.No. 92721

Tr.CMP.No.s 735 and 736 of 2019
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RGN (CO)
GN (17/02/2020)