

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

TR.C.M.P.No.780 of 2019
and
C.M.P.No.21833 of 2019

Manjula ... Petitioner

Vs.

R.Vinoth Kumar ... Respondent

Prayer: Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw the H.M.O.P.No.168 of 2019 pending on the file of the Family Court, Tiruvallur and transfer the same to the file of the V Additional Family Court, Chennai.

For Petitioner : Mr.C.R.Malarvannan
For Respondent : Mr.J.Ganesh

O R D E R

This Transfer Civil Miscellaneous Petition has been filed seeking for transfer of H.M.O.P.No.168 of 2019 pending on the file of the Family Court, Tiruvallur and transfer the same to the file of the V Additional Family Court, Chennai.

2. The petitioner herein is the wife, who has filed the present Transfer Civil Miscellaneous Petition seeking for withdrawal of H.M.O.P.No.168 of 2019 pending on the file of the Family Court, Tiruvallur and transfer the same to the file of the V Additional Family Court, Chennai.

3. The case of the petitioner is that she got married to the respondent on 11.09.2008 at Kandasamy Chettiyar Thirumana Mandabam, Periyakuppam, Tiruvallur, as per the Hindu rites and Custom. The same was arranged marriage and out of the wedlock, a female child viz., Tanya Shree was born on 26.06.2013. After their marriage, they started their marriage life at respondent's house, Tiruvallur along with his parents. Prior to the marriage, the respondent represented that he was working in marketing field and was earning handfull salary. After the marriage only

she came to know that the respondent was irregular in his job and he did not spend any amount for family expenses and apart from this, the respondent also has the habit of consuming alcohol frequently.

4. In the year 2010, the respondent shifted the matrimonial house to a rental house at Ayanavaram, Chennai and there they lived only for six months. Even there also, the respondent used to consume alcohol frequently. Hence, the family members of the respondent advised to shift the house to Kilpauk, Chennai. Accordingly, the respondent shifted the house to No.15/33, Thiyagappa road, Kilpauk, Chennai - 600 010, where the petitioner is residing at present. At that time, the respondent got employment in 'Sutherland Technologies' and he used to spend his entire salary for his habit of consuming alcohol.

5. Due to delay in conceiving, both the parties went for medical treatment. The Doctor diagnosed that respondent has some problem and a surgery to be done. The petitioner's mother spent the entire medical expenses for the surgery carried out at AKN Hospital, Kellys, Chennai. Thereafter, she got conceived and delivered a female child on 24.06.2013. One occasion when their minor daughter was studying LKG, the respondent created quarrel and assaulted her with plastic mop and accidentally attacked the child and due to the same, the minor child sustained injuries on her head. While so, in the year 2017, the respondent had created problems with the petitioner and left the matrimonial house.

6. The respondent filed a divorce case with false grounds in H.M.O.P.No.15 of 2017 on the file of Family Court, Tiruvallur. Since, the petitioner and her daughter were residing at Chennai, the petitioner filed a transfer petition before this Court in Tr.C.M.P.No.167 of 2017 seeking for transfer of the said H.M.O.P., to the Family Court, Chennai. This Court by the order dated 27.06.2017 allowed the said transfer petition and the said H.M.O.P. was transferred to V Additional Family Court, Chennai and renumbered as O.P.No.1400 of 2018. During the first hearing of the case, the respondent appeared before the V Additional Family Court, Chennai and agreed to live with the petitioner. Believing the words of the respondent and for the welfare of the child, the petitioner agreed for the reunion and hence the respondent not pressed the divorce petition in O.P.No.1400 of 2018. Then the petitioner and respondent started to live at No.15/33, Ground Floor, Thiyagappa road, Kilpauk, Chennai - 600 010.

7. Even after the reunion also the respondent did not change his attitude. Finally on 15.07.2019, the respondent left the

matrimonial house. Thereafter, the respondent filed another divorce petition on the file of Family Court, Tiruvallur in H.M.O.P.No.168 of 2019 and a summon was received by the petitioner. The said divorce petition was posted on 15.10.2019. Since, the petitioner was residing at Chennai and he does not have any male members to accompany her to attend the court, she filed a maintenance case in M.C.No.493 of 2019 on the file of the V Additional Family Court, Chennai against the respondent and the said case was posted on 18.10.2019 for the appearance of the respondent.

8. She further states that being a women it is very difficult for her to attend the Family Court at Tiruvallur for the hearings. Apart from that the respondent has to attend the M.C.No.493 of 2019 on the file of V Additional Family Court, Chennai. Hence, the petitioner is seeking to transfer the H.M.O.P.No.168 of 2019 pending on the file of the Family Court, Tiruvallur to the file of the V Additional Family Court, Chennai.

9. The learned counsel appearing for the petitioner submitted that since the petitioner has also filed a maintenance case in M.C.No.493 of 2019 on the file of the V Additional Family Court, Chennai, then the H.M.O.P. filed by the respondent in H.M.O.P.No.168 of 2019 pending on the file of the Family Court, Tiruvallur can be transferred to the V Additional Family Court, Chennai.

10. The learned counsel appearing for the respondent submitted that the respondent has already filed an H.M.O.P. in H.M.O.P.No.168 of 2019 on the file of the Family Court, Tiruvallur, which is pending. Hence, the present transfer Civil Miscellaneous Petition is liable to be dismissed and prayed for dismissal of this petition.

11. Heard the learned counsel for the petitioner and respondent and perused the entire materials on record.

12. 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]. Hence, this Court is inclined to transfer the H.M.O.P.No.168 of 2019 on the file of the Family Court, Tiruvallur to the file of the V Additional Family Court, Chennai as per convenience of the petitioner/wife.

13. Accordingly, this Transfer Civil Miscellaneous Petition is allowed and the H.M.O.P.No.168 of 2019 pending on the file of the Family Court, Tiruvallur is withdrawn and transferred to the file of the V Additional Family Court, Chennai. No costs. Consequently, the connected miscellaneous petition is closed.

14. The Registry of the Family Court, Tiruvallur, is directed to transmit the entire case papers/bundles relating to the H.M.O.P.No.168 of 2019 to the V Additional Family Court, Chennai, within a period of two weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Presiding Officer, Family Court, Tiruvallur.

2.The Presiding Officer, V Additional Family Court, Chennai.

+1 cc to M/s.C.R.Malarvannan, Advocate Sr.No. 98305

AKM/14.02.2020/4P-4C /

TR.C.M.P.No.780 of 2019

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