

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2019

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

TR C.M.P. No.817 of 2019

and

C.M.P.No.22660 of 2019

Pavithra

... Petitioner

Vs.

Dharmalingam

... Respondent

PRAYER: Transfer Civil Miscellaneous Petition filed under section 24 of C.P.C., to withdraw the FCOP No.322 of 2019 from the file of Family Court, Erode and to transfer the same to the file of Subordinate Court, Karur.

For Petitioner : M/s.KTS Sivakumar

For Respondent : Mr.M.Guruprasad

ORDER

This Transfer Civil Miscellaneous Petition is filed seeking to withdraw and transfer F.C.O.P.No.322 of 2019 on the file of the Family Court, Erode to Subordinate Court, Karur.

2. The case of the petitioner is that marriage between the petitioner and the respondent was solemnized on 02.03.2017. Out of their wedlock, the petitioner gave birth to a female child on 18.11.2017. After that the respondent never took care of the child and the petitioner. The respondent file FCOP for dissolving the marriage with false allegations against the petitioner/wife. Summon was sent to the petitioner from Family Court, Erode.

3. The learned counsel for the petitioner would submit that at present the petitioner is living with her aged parents at Karur. According to her, she is unemployed and depending upon her parents. Since the respondent has filed the FCOP for dissolution of marriage before the Family Court, Erode, it will be difficult for her to travel along with her minor child for each and every hearing. He further stated that the petitioner's child falls often sick and filed a medical report to that effect. Whereas, if the FCOP No.322 of 2019 filed by the respondent is transferred to the file of the Subordinate Court,

Karur, it will be easy and convenient for her to take care of all the matters.

4. The learned counsel for the respondent submitted that the case may be transferred to Subordinate Court, Kodumudi, Erode.

5. Heard both side and perused the materials available on record.

6. This Court is not inclined to accept the submission made by the learned counsel for the respondent. A perusal of the documents would indicate that the petitioner is living at her parents' home and the respondent has not taken care of his wife and child. In these circumstances, she cannot force her parents to incur additional expenditure to attend the proceedings at the Family Court, Erode along with her minor child and considering the 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 feels it appropriate to withdraw and transfer F.C.O.P.No.322 of 2019 from the file of Family Court, Erode to Subordinate Court, Karur. Accordingly, the Transfer Civil Miscellaneous Petition is allowed. Hence the Registry of the Family Court, Erode is directed to transmit the entire case papers to the Subordinate Court, Karur within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Judge, Family Court, Erode
2. The Subordinate Judge, Karur.

+1 cc to M/s.K.T.S.Sivakumar, Advocate Sr.No. 96687

+1 cc to M/s.M.Guruprasad, Advocate Sr.No. 97130

AKM/07.01.2020/2P-5C /

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