

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tr.C.M.P.No.831 of 2019 and
C.M.P.No.22926 of 2019

J.Anitha

... Petitioner

Vs.

R.Vadivelu

... Respondent

Prayer:

Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw and transfer the H.M.O.P.No.28 of 2019, pending on the file of Sub Court,Tirupattur, Vellore District to Poonamallee, Thiruvallur District.

For Petitioner : Mr.J.Paulraj

For Respondent : Mrs.M.A.Mumtaj Surya

O R D E R

The petitioner herein, who is the wife of the respondent, has filed the present petition seeking to transfer H.M.O.P.No.28 of 2019 pending on the file of Sub Court, Tirupattur, Vellore District to the Sub Court, Poonamallee at Thiruvallur District.

2. The case of the petitioner is that she got married to the respondent on 29.08.2012 at Madapalli Sri Venkateshwara Kalyana Mandapam, Tirupattur, Vellore District, a male child, namely, Praveen was born out of the wed lock and the child is aged about 6 years and going to school. After the birth of the child, the respondent totally neglected her and the child and presently, she is staying with her parents, who are aged and having ill health. Further, the petitioner's father is sick and bedridden and her mother is a retired person and they are not able to financially support the petitioner and her brothers are living in a separate home. The petitioner also avers that for the past 5 years, the respondent neither visited the child nor supported them in any manner. In the meantime, the respondent has filed a petition seeking to

dissolve the marriage held between him and the petitioner on various grounds before the Sub Court, Thirupathur with false allegations. Since the petitioner cannot travel and attend each and every hearing at Thirupattur due to severe financial crises, she seeks to transfer the said petition to the Sub Court, Poonamallee.

3. Per contra, a detailed counter affidavit has been filed by the respondent stating that since the respondent belongs to a poor family, the petitioner and her relatives had ill-treated him often from the date of marriage. Though the respondent has requested numerous times to come and live with him, the petitioner had wantonly neglected him and she is staying in her parents house for the past 5 years. Thereafter, the respondent had resided with the petitioner and her parents for few days, at that time also, the respondent was insulted and humiliated, hence he has come back to live with his parents. The respondent is working in a paint shop, namely, Sri Arunagiri Traders for daily wage in Vishamangalam Village and is getting only a meager amount as salary. The respondent could not even spend for his travel expenses and food with his meager salary if the case is transferred to poonamalle, however, there are no financial issues to the petitioner. The petitioner is from a well-off family, her mother is a retired government employee and her father is a retired reserve bank employee and they receive Rs.1,00,000/- as pension. Moreover, the petitioner owns ertiga car and came to attend hearings in that car to Tirupattur Court.

4. The counter affidavit of the respondent proceeds to state that the petitioner need not bring the child every time to Court, since the child is 6 years old and attending school, the parents of the petitioner can take care of the child. Further, the petitioner has no intention of joining the husband at any point of time and that this petition is filed only to harass the respondent and hence he seeks to dismiss the petition.

5. Heard the learned counsel on either side and perused the documents placed on record.

6. From the perusal of the records it is seen that the petitioner / wife has got six years old school going child and the respondent / husband has filed a petition before the Sub Court, Thirupattur, Vellore District, which is far away from Poonamallee. The other averments stated in the counter affidavit needs to be proved and mere averments without any supporting documents cannot be taken into account and accordingly, taking note of the fact 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], this Court is inclined to allow this petition seeking for transfer.

7. Accordingly, the H.M.O.P.No.28 of 2019 pending on the file of Subordinate Court, Thirupattur is withdrawn and the same is transferred to the Sub Court, Poonamallee, Thiruvallur District. The Registry of the Subordinate Court, Thirupattur is directed to transmit the entire case papers to the Sub Court, Poonamallee, Thiruvallur District within a period of four weeks from the date of receipt of copy of this order.

With the above observation, the present Transfer Civil Miscellaneous Petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//
Sub Assistant Registrar

ssd

To

1. The Subordinate Court,
Thirupattur, Vellore District.
2. The Sub Court,
Poonamallee, Thiruvallur District.

+1cc to Mr.J.Paulraj, Advocate SR.99747

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NRL(CO)
CB(10/01/2020)