

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2019

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Tr.C.M.P.No.512 of 2017
and C.M.P.No.10553 of 2017

Thenmozhi

..

Petitioner

versus

Satheesh

..

Respondent

Prayer: Petition is filed under Section 24 of C.P.C., to withdraw H.M.O.P.No.26 of 2017 pending on the file of the Principal Sub Court, Mannargudi and transfer the same to the file of the Sub Court, Nagapattinam, to be tried along with the Petition in H.M.O.P.No.72 of 2017 pending on its file.

For Petitioner : M/s.M.Abbiraami
for Mr.P.Dinesh Kumar

For Respondent : No Appearance

O R D E R

This Transfer Civil Miscellaneous Petition has been filed under Section 24 of the Code of Civil Procedure to withdraw the case i.e. H.M.O.P.No.26 of 2017 pending on the file of the Principal Sub Court, Mannargudi and transfer the same to the file of the Sub Court, Nagapattinam, to be tried along with the Petition in H.M.O.P.No.72 of 2017 pending on its file.

2. The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was solemnized on 08.02.2015 at Vijaya Mahal, Thiruthuraipoondi, as per Hindu rites and customs. Due to the wedlock, on 03.12.2016, the petitioner gave birth to one female child. After gave birth to the female child, difference of opinion arose between the petitioner and respondent, resultantly, the petitioner left the matrimonial home and residing along with her parents at Nagapattinam.

3. After leaving the matrimonial home by the petitioner, the respondent has filed a petition before the Principal Sub Court, Mannargudi, under Section 13(1)(i-a) (i-b) of the Hindu Marriage Act, 1955, for annulling the marriage happened between them on 08.02.2015. The said petition is now pending before the Principal Sub Court, Mannargudi, as H.M.O.P.No.26 of 2017.

4. After knowing the particulars of the above case, the petitioner has filed a petition against the respondent before the Sub Court, Nagapattinam, under Section 9(1) of the Hindu Marriage Act, 1955, for the relief of restitution of conjugal rights. The said petition is now pending before the Sub Court, Nagapattinam as H.M.O.P.No.72 of 2017. In the said circumstances, the petitioner has approached this Court by way of filing the present Transfer Civil Miscellaneous Petition for the relief as stated supra.

5. According to the petitioner, she is residing along with her parents at Nagapattinam, the distance between her parents residence and Mannargudi is about 75 kilometers, being a lady, it is very difficult for her to go to Mannargudi to attend the Court proceedings. Further, she is not having any independent income and she is depending on her parents for her day-to-day needs and for litigation expenses. More than that, as of now, the petition filed by the petitioner is pending before the Sub Court, Nagapattinam in H.M.O.P.No.72 of 2017. Since the two cases are related to matrimonial life of the petitioner and respondent, if the said petitions are tried separately, there may be a chance for coming out the conflicting decisions.

6. In respect to the respondent, he was served with Court notice as early as on 09.10.2018 and his name is printed in the cause list, thereafter till today, he has not appeared before this Court either in person or through counsel.

7. However, both the cases i.e., H.M.O.P.Nos.26 of 2017 and 72 of 2017 are filed by the petitioner and respondent respectively only in respect to their matrimonial life. Since the prayer sought for by the petitioner as well as the respondent is related to the matrimonial life, if these cases are tried separately, there may be a chance for coming out the conflicting decisions. Further, since the petitioner is a lady it is very difficult for her in attending the Court proceedings

at Mannargudi after travelling 75 kilometers. More than that she is not having any independent income. Accordingly, the reason stated by the petitioner for allowing the petition is reasonable one.

8. In the result, the Transfer Civil Miscellaneous Petition is ordered. The petition in H.M.O.P.No.26 of 2017 is ordered to be withdrawn from the file of the Principal Sub Court, Mannargudi and transferred to the file of the Sub Court, Nagapattinam. It is left open to the learned Subordinate Judge, Nagapattinam, to decide for joint trial or for simultaneous trial. The learned Principal Subordinate Judge, Mannargudi, is directed to transmit all the records pertaining to H.M.O.P.No.26 of 2017 to the file of the Sub Court, Nagapattinam, within a period of two weeks from the date of receipt of a copy of this order. On receipt of records, the learned Subordinate Judge, Nagapattinam, is directed to dispose of the case as expeditiously as possible. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Subordinate Judge, Mannargudi.

2.The Subordinate Judge, Nagapattinam.

+1cc to Mr.P.Dinesh Kumar , Advocate SR.No. 8474

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A.SK(14/03/2019)

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