

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 13.12.2018

JUDGMENT PRONOUNCED ON : 09.01.2019

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Tr.C.M.P.Nos. 739 of 2018 and 809 of 2018
and
C.M.P.Nos.18005 of 2018 and 19993 of 2018

N.Nandhini ..Petitioner in Tr.CMP.No.739 of 2018
C.Pradiesh ..Petitioner in Tr.CMP.No.809 of 2018

Vs

C.Pradiesh ..Respondent in Tr.CMP.No.739 of 2018
N.Nandhini ..Respondent in Tr.CMP.No.809 of 2018

Prayer in Tr.C.M.P.No.739 of 2018: Transfer Civil Miscellaneous Petition filed under Section 24 (1) (b) (ii) of the Code of Civil Procedure to withdraw H.M.O.P.No.151 of 2018 pending on the file of the Subordinate Court, Uthamapalayam and to transfer the same to the file of the Family Court, Coimbatore.

Prayer in Tr.C.M.P.No.809 of 2018: Transfer Civil Miscellaneous Petition filed under Section 24 (1) (b) (ii) of Code of Civil Procedure to withdraw H.M.O.P.No.1476 of 2018 pending on the file of the Additional Family Court, Coimbatore and to transfer the same to the file of the Subordinate Court, Uthamapalayam for joint trial along with H.M.O.P.No.151 of 2018.

For Petitioners : Mr.V.Sathish in Tr.CMP.No.739 of 2018
: Mr.V.V.Sairam in Tr.CMP.No.809 of 2018

For Respondents : Mr.V.V.Sairam in Tr.CMP.No.739 of 2018
: Mr.V.Sathish in Tr.CMP.No.809 of 2018

O R D E R

The Transfer Civil Miscellaneous Petition No.739 of 2018 has been filed by the petitioner under Section 24 of Civil Procedure Code, seeking the relief to withdraw H.M.O.P.No.151 of 2018 pending on the file of the Subordinate Court, Uthamapalayam and to transfer the same to the file of the Family Court, Coimbatore.

2. The Transfer Civil Miscellaneous Petition No.809 of 2018 has been filed by the petitioner under Section 24 of the Civil Procedure Code, seeking the relief to withdraw the H.M.O.P.No.1476 of 2018 pending on the file of the Additional Family Court, Coimbatore and to transfer the same to the Subordinate Court, Uthamapalayam for joint trial along with H.M.O.P.No.151 of 2018.

3. The petitioner in Tr.C.M.P.No.739 of 2018 and the Petitioner in Tr.C.M.P.No.809 of 2018 are the husband and wife respectively. On 25.02.2018 at Gudalur, Theni District, their marriage was performed as per the Hindu rites and Customs. After the marriage, both the husband and the wife were leading their matrimonial life at Theni. There after, due to the nature of employment of the husband, both of them shifted their matrimonial home to Mysore. Subsequently, due to the difference of opinion arose between them, the wife left the matrimonial home and joined with her parents at Coimbatore. After leaving the matrimonial house, she filed the petition against the respondent, under Section 9 of the Hindu Marriage Act, seeking the relief of restitution of conjugal rights. The said petition is pending with the Additional Family Court, Coimbatore in H.M.O.P.No.1476 of 2018.

4. On the other hand, the husband filed an application before the Subordinate Court, Uthamapalayam for annulling the marriage happened between them. The said application has been pending with the Subordinate Court, Uthamapalayam in H.M.O.P.No.151 of 2018. In the affidavit filed by both the petitioners, they raised so many allegations against each other. Since, the allegations levelled by either parties are related to their matrimonial life, further this application is for transfer to proceedings from one place to another place, it is not necessary to this Court, to find out the genuiness of the allegations. Now, the only issue involved in this petition is whether the petitioners in both the Transfer Civil Miscellaneous Petitions have projected sufficient cause for allowing the applications or not.

5. The learned counsel appearing for the petitioner would contend that, being a lady it is very difficult for her to attend the Court proceedings in Uthamapalayam. Further, she is not having any independent income for maintaining herself and she is depending upon her parents for her day to day expenses.

6. Per contra, the learned Counsel appearing for the respondent, would contend that even though, the wife is residing with her parents in Coimbatore, it is not difficult for her to attend the Court proceedings at Uthamapalayam.

7. Today, I heard Mr.V.Sathish, the learned Counsel appearing for the petitioner in Tr.C.M.P.No.739 of 2018 and for the respondent in Tr.C.M.P.No.809 of 2018 and Mr.V.V.Sairam, the learned Counsel appearing for the respondent in Tr.C.M.P.No. 739 of 2018 and for the petitioner in Tr.C.M.P.No.809 of 2018.

8. Initially, on the side of the husband he has not stated anything about the income derived by his wife. In otherwise, it is an admitted fact that the distance between Uthamapalayam and Coimbatore is about 350 kilometers, hence being a lady, it is very difficult for her to travel 350 Kms., all along from Coimbatore to Uthamapalayam.

9. In the said circumstances, the learned counsel appearing for the respondent relied upon the Judgments of the Honourable Apex Court reported in 2005 11 SCC 535 [Preeti Sharma Vs. Manjit Sharma] and 2004 13 SCC 411 [Teen Chhabra Vs. Manish Shhabra], and submitted that the respondent is ready to pay the travelling expenses to be incurred by the wife for attending the Court proceedings. As per the principle laid down by our Honourable Apex Court, in the above judgments our Honourable Apex Court reiterated that if the lady is not having any means for it is proper to direct the husband to pay the same travelling expenses. However, the place Uthamapalayam, in which the case filed by the husband is pending is not having any sufficient facilities for stay. Considering the distance between two stations it will take ten to twelve hours for reaching Uthamapalayam from Coimbatore. In such circumstances, even though the husband is willing to bear the travelling expenses of the wife, it is very difficult for her to travel such a long distance and participated in the Court Proceedings.

10. In the said circumstances, both the counsel present here are suggested that common place in between Uthamapalayam and Coimbatore has to be fixed for deciding both the cases. Hence, considering the said submissions on either side counsel, this Court came to the conclusion that Palani is the appropriate place and it is convenient for both the parties for attending the Court proceedings at Palani.

11. In the light of the above discussions, the Transfer Civil Miscellaneous Petitions are ordered. The case in H.M.O.P.Nos.151 of 2018 and 1476 of 2018 are ordered to be withdrawn from the respective Courts and transfer to the file of the learned Subordinate Judge, Palani. The learned Subordinate Judge, Uthamapalayam and the learned Judge of the Additional Family Court, Coimbatore, are directed to transmit the case records pertaining to H.M.O.P.Nos.151 of 2018 and 1476 of 2018 respectively to the file of the Subordinate Court, Palani, within a period of two weeks from the date of receipt of a copy

of this order. On receipt of such records, the learned Subordinate Judge, Palani is directed to dispose of both the cases as expeditiously as possible. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sbn

To

- 1.The Subordinate Judge,
Subordinate Court,
Uthamapalayam.
- 2.The Judge,
Additional Family Court,
Coimbatore.
- 3.The Judge,
The Subordinate Court,
Palani.

+1cc to Mr.V.V.Sairam, Advocate, S.R.No.2376

Tr.C.M.P.Nos. 739 of 2018 and 809 of 2018
and
C.M.P.Nos.18005 of 2018 and 19993 of 2018

NM(CO)

rrs 06/02/2019

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