

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2019

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Tr.C.M.P.No.737 of 2018
and C.M.P.No.17993 of 2018

R.Seethalakshmi

.. Petitioner

versus

T.Mahendran

.. Respondent

Prayer: Petition is filed under Section 24 of C.P.C., to withdraw H.M.O.P.No.1286 of 2018 pending on the file of the Additional Family Court, Coimbatore and transfer the same to the file of the Sub Court, Tambaram, to be tried along with the Petition in H.M.O.P.No.168 of 2018 pending on its file.

For Petitioner : M/s.V.S.Usha Rani

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.1286 of 2018 pending on the file of the Additional Family Court, Coimbatore and transfer the same to the file of the Sub Court, Tambaram, to be tried along with the Petition in H.M.O.P.No.168 of 2018 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 10.11.2014 at Ramalakshmi Mahal, Coimbatore, as per Hindu rites and customs. After the marriage, both the petitioner and respondent were lived together in the matrimonial home at Coimbatore. After some time, from the date of marriage, difference of opinion arose between them, resultantly, the

petitioner left the matrimonial home and residing along with her parents at Chennai. Since the efforts taken by the elders for reunion was ended in futile, the petitioner has filed a petition before the Sub Court, Tambaram, under Sections 13(1)(ia) of the Hindu Marriage Act, 1955, for annulling the marriage. The said petition is now pending before the Sub Court, Tambaram as H.M.O.P.No.168 of 2018.

3. In the meanwhile, the respondent has filed a petition against the petitioner before the Additional Family Court, Coimbatore, under Section 9 of the Hindu Marriage Act, 1955, for the relief of restitution of conjugal rights. The said petition is now pending before the Family Court, Coimbatore as H.M.O.P.No.1286 of 2018.

4. According to the petitioner, she is residing at Chennai, along with her parents. The distance between her residence and Coimbatore is about 400 kilometers, being a lady, it is very difficult for her to go to Coimbatore to attend the Court proceedings. Further, the respondent only with an intention to harass the petitioner filed the petition under Section 9 of the Hindu Marriage Act, before the Additional Family Court, Coimbatore. Unless both the O.Ps. are heard together and decided jointly, there will be a chance for coming out the conflicting decisions. In the said circumstances, the petitioner has come out with the present Transfer Civil Miscellaneous Petition for the relief stated earlier in the first paragraph of this order.

5. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

6. Though notice was served on the respondent as early as on 28.11.2018 and his name is printed in the cause list, there is no representation on behalf of him either in person or through counsel. So, the attitude of the respondent would show that he is not having any objection for allowing this petition.

7. It is well settled law that whenever, the transfer petition is filed in matrimonial disputes, the convenience of the wife shall be given preference, as held by our Honourable Apex Court in the judgments in Arti Rani @ Pinki Devi and another Vs. Dharmendra Kumar Gupta reported in 2008 (9) SCC 353 and in Sumita Singh Vs. Kumar Sanjay and another reported in AIR 2002 SC 396. In this case also, the petitioner categorically proves that she is residing along with her parents at Chennai,

further, being a lady, it is very difficult for her to attend the Court proceedings at Coimbatore. Apart from that, as per the provisions of the Hindu Marriage Act, place of residence of wife must be taken into account for considering the issue involved in these type of petitions.

8. In the result, the Transfer Civil Miscellaneous Petition is ordered. The petition in H.M.O.P.No.1286 of 2018 is ordered to be withdrawn from the file of the Additional Family Court, Coimbatore and transferred to the file of the Sub Court, Tambaram, to be tried along with H.M.O.P.No.168 of 2018 filed by the petitioner, in order to avoid multiplicity of proceedings and conflicting judgments being delivered by two different Courts. The learned Additional Judge, Family Court, Coimbatore, is directed to transmit all the records pertaining to H.M.O.P.No.1286 of 2018 to the file of the Sub Court, Tambaram, 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, Tambaram, is directed to dispose of the case as expeditiously as possible. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional Judge, Family Court, Coimbatore.

2.The Subordinate Judge, Tambaram.

+1 cc to M/s.V.S.Usha Rani, Advocate Sr.No.614

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NRI (CO)
CSL/31.01.2019