

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated: 24.01.2019

Coram
THE HON'BLE MR. JUSTICE R. PONGIAPPAN

Tr. C.M.P. No. 788 of 2018 and
CMP No.19482 of 2018

D. Lavanya

..Petitioner

Vs

D. Sriram Nag

..Respondent

Prayer: Transfer Civil Miscellaneous Petition filed under Section 24 of Code of Civil Procedure to withdraw HMOP No.121 of 2018, from the file of Family Court at Tiruchirapalli and to transfer the same to Subordinate Court at Tiruvallur for joint trial along with HMOP No.12 of 2018.

For Petitioner : Mr. G. Govarthanan

For Respondent : No appearance

O R D E R

The petitioner is the respondent in HMOP No.121 of 2018 pending on the file of Family Court, Trichy. This application has been filed by the petitioner under Section 24 of Code of Civil Procedure, in which she is seeking the relief to withdraw the above said case from the file of Family Court, Trichy and to transfer the same to the Subordinate Court, Thiruvallur for joint trial along with HMOP No.12 of 2018.

2. The petitioner is the wife and the respondent is the husband. The marriage between the petitioner and the respondent was solemnized on 05.08.2009 at Secundrabad as per the Hindu Rites and Customs. Out of the wedlock, they have blessed with a male baby namely Sathvik. After gave birth to a male child, due to the difference of opinion arose between the petitioner and the respondent, the respondent refused to take the petitioner to the matrimonial home. At present, the petitioner is residing with her brother's home along with her child at Uthukottai Taluk, Thiruvallur District.

3. Instead of taking the petitioner to the matrimonial home, the respondent filed an application against the petitioner for the relief of divorce. The said application has been pending

with Family Court, Trichy in HMOP No.121 of 2018. Subsequently, the petitioner has filed an application for the relief of restitution of conjugal rights in HMOP No.12 of 2018. The said application has been pending with Subordinate Court, Thiruvallur. In the said circumstances, the petitioner has approached this Court, by way of filing this application for the relief stated in the 1st paragraph of this Order.

4. According to the petitioner, the male child namely Sathvik born to the petitioner and the respondent was studying in LKG in Sankara Vidhyalaya at Thandalam, which is nearby Thiruvallur. The petitioner and her child are under the care and custody of her unmarried elder brother. Further, the parents of the petitioner is no more. So, it is very difficult for the petitioner to attend the Court proceedings at Trichy. More than that, if both the cases are tried in a separate Court, there may be a chance of coming out of conflicting Judgments.

5. In respect to the respondent, he was served with the notice as yearly as on 28.11.2018. Subsequently, he has not appeared before this Court either personally or through an Advocate.

6. Now, considering the arguments advanced by the counsel appearing for the petitioner, it is true that being a lady, it is very difficult for her to attend the Court proceedings at Trichy, after travelling 350 kms from Thiruvallur. Since the parents of the petitioner is no more, we can not expect her brother will accompany her all along a way to Trichy. Further more, if both the cases are tried in the different Forum, there will be a chance of coming out of conflicting Judgments.

7. In the said circumstances, it is relevant to see the Judgment of our Honourable Apex Court, reported 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 the said Judgment, it was held that the convenience of the wife must be taken into account for deciding these type of applications. By applying the above said principle, I am of the considered opinion that, if the prayer sought for the petitioner is allowed, it will be convenient for the petitioner to attend the Court proceedings at Thiruvallur.

8. In the light of the above discussions, this Transfer Civil Miscellaneous Petition is allowed. Accordingly, HMOP No.121 of 2018 is ordered to be withdrawn from the file of Family Court, Tiruchirapalli and to transfer to same to the file of Subordinate Court at Thiruvallur. The learned Presiding Officer of the Family Court Tiruchirappalli is directed to

transmit the case records pertaining to HMOP No.121 of 2018 to Subordinate Court at Thiruvallur, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such records, the Subordinate Judge, Thiruvallur, is directed to dispose the case HMOP No.121 of 2018 along with HMOP No.12 of 2018 by joint trial or simultaneous trial. It is left open to the Subordinate Judge, Thiruvallur to decide for joint trial or for simultaneous trial. No costs. Subsequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

vrn

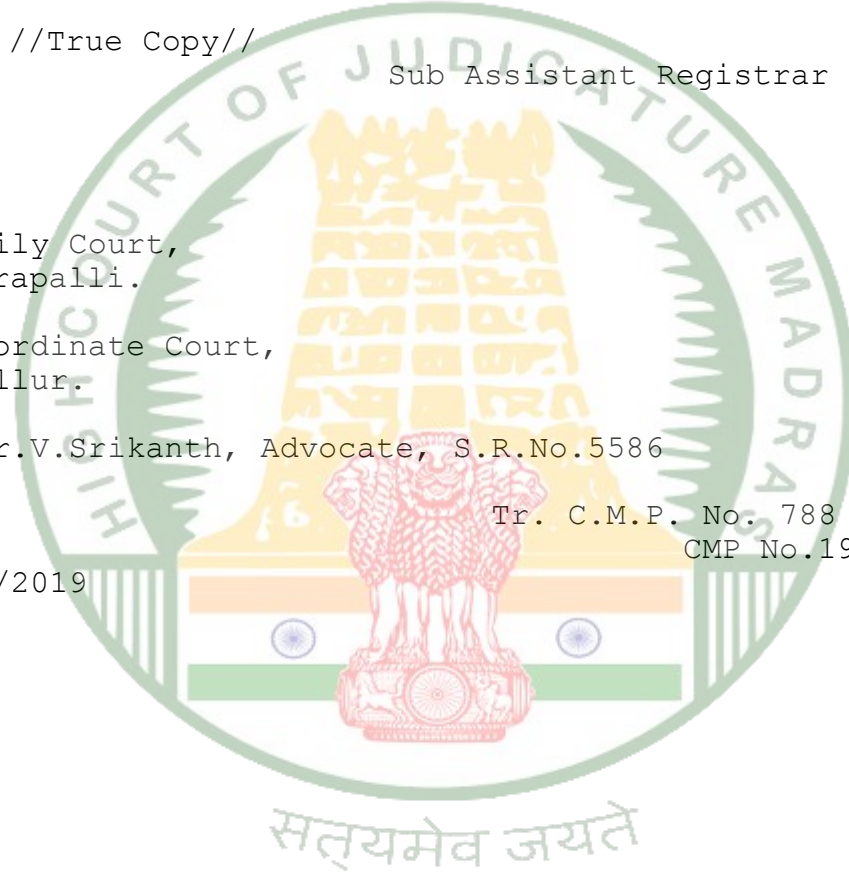
To

- 1.The Family Court,
Tiruchirapalli.
- 2.The Subordinate Court,
Thiruvallur.

+lcc to Mr.V.Srikanth, Advocate, S.R.No.5586

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rrs 15/02/2019



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