

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 13.12.2018
JUDGMENT PRONOUNCED ON: 04 .01.2019

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Transfer CMP.No.814 of 2018
and C.M.P.No.20057 of 2018

A.Uma Maheswari

Petitioner

Vs

M.Balaji @ Periyakaruppan

Respondent

PRAYER: Transfer Civil Miscellaneous Petition filed under Section 24 of the Code of the Civil Procedure, to withdraw H.M.O.P.No.3506 of 2018 pending on the file of the II Additional Family Court, Chennai, and to transfer the same to the file of the Subordinate Court, Kumbakonam.

For Petitioner : Mr.J.KiranKumar for
Mr.B.Srinivasan

For Respondent : M/s Geeta Ramaseshan

O R D E R

This Transfer Civil Miscellaneous Petition has been filed under Section 24 of Civil Procedure Code, seeking the relief to withdraw the H.M.O.P.No.3506 of 2018 from the file of the II Additional Family Court, Chennai, and to transfer the same to the file of Subordinate Court, Kumbakonam.

2. The petitioner is the wife and the respondent is the husband. The marriage between the petitioner and the respondent was held on 02.09.2009 at Nattukottai Nagarathar Thirumana Mandapam, Valaiyampatti, as per the Hindu rites and Customs. After marriage, both the petitioner and the respondent lived together as husband and wife in Masudhi Street, Tiruvallikeni, Chennai. After some time from the date of marriage, due to the torture given by the Father-in-law of the petitioner, difference of opinion arose between the petitioner and the respondent. Resultantly, a separate matrimonial home had been set up in the next street to the respondent's house. However, from the month of September 2015, after giving birth to two female children, due to the torture given by the respondent, in respect to the dowry, the petitioner left the matrimonial home and joined with

her parents in Kumbakonam. Thereafter, she preferred a complaint before the Social Welfare Department at Kumbakonam.

3. In the meantime, the respondent has filed an application against the petitioner, in which he seeks the relief of Divorce. The said application has been pending with the II Additional Family Court, Chennai, in H.M.O.P.No.3506 of 2018. In the said circumstances, she has approached this Court and filed this Tr.C.M.P., for the relief stated supra.

4. According to the petitioner, the distance between her residence and Chennai is about 300 kilometers. Further, she is not having any independent income and she is also having the duty to protect her two children. Hence, it is inconvenient for her to proceed to Chennai and to defend the case, which filed by the respondent.

5. The learned counsel appearing for the respondent would contend that, only on account of the cruelty committed by the petitioner, the respondent is went up to the level of filing an application for Divorce. According to him, since he is not having any relatives in Kumbakonam, it is very difficult for him in attending the Court proceedings at Kumbakonam. He further contended that, it is not difficult to the petitioner in attending the Court proceedings at Chennai.

6. I have heard learned counsel Mr.J.KiranKumar appearing for Mr.B.Srinivasan, learned counsel appearing for the petitioner and M/s. Geeta Ramaseshan, the learned counsel appearing for the respondent.

7. On culling out the entire arguments advanced by the counsel appearing on behalf of the petitioner and the respondent, it appears that the petitioner and the respondent are having three disputes with regard to their matrimonial life. The aforesaid three disputes are extracted here under:

(i) Petition filed by the petitioner before the Protection Officer under the Provisions of Domestic Violence Act.

(ii) Proceedings initiated by the petitioner under Section 125 Cr.PC. for claiming maintenance from the respondent in which, the petitioner herein is the petitioner.

(iii) Lastly, the case in H.M.O.P.No.3506 of 2018 preferred by the respondent before the Family Court at Chennai.

According to the petitioner, since the distance between the residence of the petitioner and the Chennai is about 300 kilometers, it is very difficult for her to attend the Court

proceedings at Chennai. Further, she is not having any independent income. Apart from that she is duty bound to maintain her two children. In the said situation, it is very difficult for her in attending the Court proceedings at Chennai.

8. In the above circumstances, it is relevant to refer to the Judgment of our Honourable Apex Court 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]. In the above Judgments, our Honourable Apex Court has held that while disposing these types of applications, the convenience of the wife must be taken into account. Accordingly, in this case also, since the petitioner is residing in Kumbakonam and further, the application filed by her for the other relief is pending in Kumbakonam, it is appropriate to transfer the H.M.O.P.No.3506 of 2018 from the file of the Family Court, Chennai to the Subordinate Court, Kumbakonam.

9. Accordingly, in the light of the above discussion, this Transfer Civil Miscellaneous Petition is allowed. The petition in H.M.O.P.No.3506 of 2018 is ordered to be withdrawn from the file of the II Additional Family Court, Chennai, and it shall stand transferred to the file of the Subordinate Court, Kumbakonam. The learned II Additional Judge, Family Court, Chennai, is directed to transmit all the records pertaining to H.M.O.P.No.3506 of 2018 to the file of the Subordinate Court, Kumbakonam, 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, Kumbakonam, is directed to dispose of the case as expeditiously as possible, within a period of six (6) months, from the date of receipt of records from II Additional Family Court, Chennai. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

sbn

To

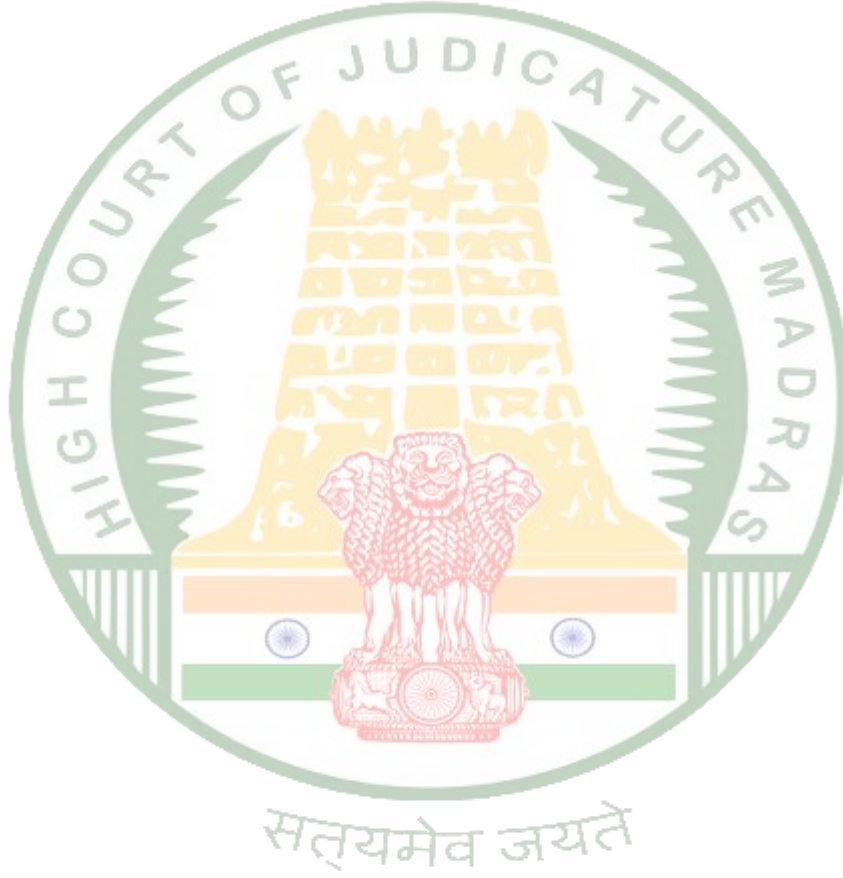
1. The II Additional Judge,
Family Court, Chennai.

2. The Subordinate Judge,
Kumbakonam.

+lcc to Mr.Geetha Rameshan, Advocate, S.R.No. 1239

Transfer CMP. No.814 of 2018
and C.M.P.No.20057 of 2018

SPD (CO)
GN (30/01/2019)



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