

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2019

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Tr.C.M.P.No.817 of 2018
and C.M.P.No.20117 of 2018

Jayalakshmi Bharathi Gopi

..

Petitioner

versus

Gopalakrishnan Jayaraman

..

Respondent

Prayer: Petition is filed under Section 24 of C.P.C., to withdraw O.P.No.342 of 2018 pending on the file of the III Additional Family Court, Chennai and transfer the same to the file of the Family Court, Pondicherry.

For Petitioner : Mr.A.V.B.Krishnakanth

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. O.P.No.342 of 2018 pending on the file of the III Additional Family Court, Chennai and transfer the same to the file of the Family Court, Pondicherry.

2. The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was solemnized on 09.07.2000 at Jayaram Thirumana Nilayam, Pondicherry, as per Hindu rites and customs. After the marriage, both the petitioner and respondent were lived together in the matrimonial home at United State of America. Due to the wedlock, the petitioner gave birth to two children, namely, Keerthana Gopi and Akshay Gopi. After gave birth to two children, due to medical ground, the petitioner moved to Chennai and the respondent has also shifted his work place to Chennai in the year of 2010. At that time, both the petitioner and respondent were set up the matrimonial home in Chennai at No.5/3, East Circular Road, Ground Floor, Mandavelipakkam, R.A.Puram,

Chennai. After setting up the matrimonial home in Chennai, due to avoidable circumstances, and unnecessary quarrels happened between them, the petitioner left the matrimonial home and residing along with her parents at Pondicherry.

3. In the meantime, the respondent has filed a petition against the petitioner before the III Additional Family Court, Chennai, under Section 13(i-a)(i-b) of the Hindu Marriage Act, 1955, for annulling the marriage. As of now, the said petition is pending before the III Additional Family Court, Chennai, as O.P.No.4779 of 2016. Subsequent to that, the petitioner has filed petition under Section 13 of the Hindu Minority and Guardianship Act before the III Additional Family Court, Chennai, in which, she is seeking the relief for the custody of the children saying that she is the natural guardian. The said petition is now pending before the III Additional Family Court, Chennai as O.P.No.342 of 2018. Hence, the petitioner has come out with the present Transfer Civil Miscellaneous Petition for the relief stated earlier in the first paragraph of this order.

4. According to the petitioner, she is residing at Pondicherry along with her parents, who are aged about 75 and 68 respectively, and the distance between her parents residence and Chennai is about 150 kilometers, it is difficult for her to attend the Court proceedings at Chennai. Further, she had undergone brain tumor surgery, she is not having any independent income and she is depending on her parents for her day-to-day needs.

5. In respect to the respondent, he was served with Court notice as early as on 27.11.2018 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. It shows that the respondent is not having any objection in respect to this petition.

6. In the said circumstances, as per the affidavit filed by the petitioner, as of now, she is residing with her parents in Pondicherry without any independent income, she has specifically stated that, she is depending on her parents for her day-to-day needs. Further, being a lady, it is very difficult for her to attend the Court proceedings at Chennai.

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.

8. Apart from that, for raising objection in respect to the allegations levelled by the petitioner against the respondent, the respondent has not appeared before this Court, further 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.

9. In the result, the Transfer Civil Miscellaneous Petition is ordered. The petition in O.P.No.342 of 2018 is ordered to be withdrawn from the file of the III Additional Family Court, Chennai and transferred to the file of the Family Court, Pondicherry. The III Additional Judge, Family Court, Chennai, is directed to transmit all the records pertaining to O.P.No.342 of 2018 to the file of the Family Court, Pondicherry, within a period of two weeks from the date of receipt of a copy of this order. On receipt of records, the learned Judge, Family Court, Pondicherry, is directed to dispose of the case as expeditiously as possible. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

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

2.The Judge, Family Court, Pondicherry.

+1 cc to M/s.A.V.B.Krishnakanth, Advocate, S.R.No.6382

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CP(CO)
SSM(19/02/2019)