

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2019

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Tr.C.M.P.No.830 of 2018
and C.M.P.No.20504 of 2018

S.Tamilarasi ..Petitioner/ Respondent

versus

S.Sasikumar .. Respondent

Prayer: Petition is filed under Section 24 of C.P.C., to withdraw H.M.O.P.No.58 of 2018 pending on the file of the Principal Sub Court, Thiruvannamalai and transfer the same to the file of the II Additional Sub Court, Villupuram.

For Petitioner : Mr.M.Nandhakumar

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.58 of 2018 pending on the file of the Principal Sub Court, Thiruvannamalai and transfer the same to the file of the II Additional Sub Court, Villupuram.

2. The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was solemnized on 02.02.2017 at Mangalam M.K.G.Thirumana Mahal, Thiruvannamalai. After the marriage, both the petitioner and respondent were lived together in the matrimonial home at Thiruvannamalai for a considerable period. 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 Villupuram. Since the efforts taken by the elders for reunion was ended in futile, the petitioner has filed a petition before the II Additional Sub Court, Villupuram, under Section 13(1)(i-a) of the Hindu Marriage Act, 1955, for annulling the marriage. The said petition is now pending before the II Additional Sub Court,

Villupuram, as H.M.O.P.No.68 of 2018.

3. After knowing the particulars of the above case, the respondent has filed a petition against the petitioner before the Principal Sub Court, Thiruvannamalai, 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 Principal Sub Court, Thiruvannamalai as H.M.O.P.No.58 of 2018.

4. According to the petitioner, she is residing at Villupuram, along with her parents and the distance between her parents residence and Thiruvannamalai is about 70 kilometers, being a lady, it is very difficult for her to go to Thiruvannamalai to attend the Court proceedings. In the said circumstances, if the said petitions are tried separately, there may be a chance for coming out the conflicting decisions and multiplicity of proceedings. 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.

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

6. In respect to the respondent, on 05.12.2018, he was served with Court notice and thereafter, Mr.V.Thiyagarajan, learned counsel appeared on behalf of the respondent. On 13.12.2018, when this petition was posted for filing counter by the respondent, there was no representation on behalf of the respondent and hence, this Court directed the Registry to list the matter on 03.01.2019 i.e. today under the caption "for orders". Even today, even after printing the name of the counsel, who appearing for the respondent in the cause list, there is no representation on behalf of the respondent. Accordingly, the respondent has not raised any objection for this petition. In otherwise, the fact that the petitioner is residing with her parents at Villupuram, is not disputed on the side of the respondent.

7. In the said circumstances, in order to deny the averments made in the affidavit filed by the petitioner, the respondent has not turned up. As per the affidavit filed by the petitioner, as of now, she is residing with her parents. Further, in the affidavit filed by the petitioner she has specifically stated that, if the two H.M.O.P.s are tried separately, there may be a chance for coming out the conflicting decisions and multiplicity of proceedings.

8. 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.

9. Apart from that, for raising objection in respect to the allegations levelled by the petitioner against the respondent, he 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.

10. It is true, if both the cases are tried separately, there may be a chance for coming out the conflicting decisions. So, considering the various parameters laid already by the Hon'ble Apex Court as well as by this Court, this Court came to the conclusion that transferring the H.M.O.P.No.58 of 2018 from the file of the Principal Sub Court, Thiruvannamalai to the file of the II Additional Sub Court, Villupuram is necessary for avoiding the above said situation.

11. In the result, the Transfer Civil Miscellaneous Petition is ordered. The petition in H.M.O.P.No.58 of 2018 is ordered to be withdrawn from the file of the Principal Sub Court, Thiruvannamalai and transferred to the file of the II Additional Sub Court, Villupuram. The Principal Subordinate Judge, Thiruvannamalai, is directed to transmit all the records pertaining to H.M.O.P.No.58 of 2018 to the file of the II Additional Sub Court, Villupuram, within a period of two weeks from the date of receipt of a copy of this order. On receipt of records, the learned II Additional Subordinate Judge, Villupuram, is directed to dispose of the case as expeditiously as possible. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

सत्यमेव जयते
Assistant Registrar (CO)

//True copy//

Sub Assistant Registrar

sri

To

1.The Principal Subordinate Judge, Thiruvannamalai.

2.The II Additional Subordinate Judge, Villupuram.

+1cc to M/s.T.Nirmaleswar, Advocate SR.No.459

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SSV(CO)
GMY(01/02/2019)



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