

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.01.2019

DELIVERED ON : 11.01.2019

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Tr.C.M.P.No.839 of 2018
and C.M.P.No.20818 of 2018

C.M.Bemi

..Petitioner

versus

B.Praveen

..Respondent

Prayer: Petition is filed under Section 24 of C.P.C., to withdraw I.D.O.P.No.114 of 2018 pending on the file of the Additional District Court, Nagercoil, Kanyakumari District and transfer the same to the file of the Family Court, Chennai.

For Petitioner : Mr.R.C.Paul Kanagaraj
for M/s.P.J.Anitha
For Respondent : Mr.T.N.Sugesh

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. I.D.O.P.No.114 of 2018 pending on the file of the Additional District Court, Nagercoil, Kanyakumari District and transfer the same to the file of the Family Court, Chennai.

2. The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was solemnized on 30.09.2013 at St.Augustine's Church, Kulasekharam, as per Christian rites and customs. After the marriage, till 2015 both the petitioner and respondent were lived together in the matrimonial home at Medavakkam in Chennai. After the year of 2015, difference of opinion arose between them, resultantly, the petitioner left the matrimonial home and stayed in Chennai for the purpose of searching the job in any one of the College.

3. After leaving the matrimonial home by the petitioner, the respondent has filed a petition before the Additional District Court, Nagercoil, Kanyakumari District, under Order IX and X of the Indian Divorce Act, 1869, for annulling the marriage. The said petition is now pending before the Additional District Court, Nagercoil, Kanyakumari District, as I.D.O.P.No.114 of 2018.

4. On seeing the presence of the petitioner in the Additional District Court, Nagercoil, Kanyakumari District, the respondent threatened her with dire consequences and hence, she left the Nagercoil and after reaching the Chennai, she gave online complaint against the respondent. Subsequently, she has filed a petition against the respondent before the III Additional Family Court, Chennai, under Section 32 of the Indian Divorce Act, 1869, for the relief of restitution of conjugal rights. The said petition is now pending before the III Additional Family Court, Chennai as O.P.No.4279 of 2018. 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. The learned counsel appearing for the petitioner would submit that she is residing at Chennai, the distance between Chennai and Nagercoil is about 700 kilometers, being a lady, it is very difficult for her to go to Nagercoil to attend the Court proceedings. Further, he submitted that the petitioner is not having any independent income and as such, allowing this petition is convenient for the petitioner. He has also submitted that, if the said petitions are tried separately, there may be a chance for coming out the conflicting decisions and multiplicity of proceedings.

6. The learned counsel appearing for the respondent would submit that already the petitioner has filed the Transfer Civil Miscellaneous Petition before this Court in Tr.C.M.P.No.555 of 2018, which was dismissed and thereafter, only for the purpose of creating a new cause of action, the petitioner has filed a petition before the III Additional Family Court, Chennai and thereafter filed the present petition for the purpose of harassing the respondent. In otherwise, both the petitioner and respondent have raised so many allegations against each other in an affidavit filed in support of this petition and also in the counter affidavit. Since the said allegations are related to the matrimonial life of the petitioner and respondent, they have to be dealt with only at the time of trial by the respective trial Court.

7. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and also perused the materials available on record.

8. Of course, at the time of filing the earlier Transfer Civil Miscellaneous Petition by this petitioner, only one case i.e. the petition filed by the respondent for the relief of divorce alone is pending before the Additional District Court, Nagercoil, Kanyakumari District and as of now, another one petition has been pending with the III Additional Family Court, Chennai. Further, in the said petition filed by the petitioner, the respondent / husband has appeared. Since one petition has been filed for the relief of restitution of conjugal rights and another petition has been filed for the relief of divorce, this Court feels that unless both the O.Ps. are heard together and decided jointly, there will be a chance for coming out the conflicting decisions.

9. In my considered view, since the dispute related to the petitioner and respondent are one and the same and hence, for disposing both petitions, ordering for joint trial or simultaneous trial is very much helpful to either parties. Further, if the said petitions are tried in different courts there may be a chance for coming out the conflicting decision.

10. 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, nowhere in the counter affidavit filed by the respondent it was mentioned that, the petitioner is residing out of the Chennai City. So, the petitioner being the wife / resident of Chennai, the convenience of the petitioner has to be necessarily taken into account for disposing this petition. Furthermore, it is alleged that the respondent is the politically influenced person, trying the case before the Additional District Court, Nagercoil, Kanyakumari District, will create much difficulties to the petitioner. Since the petition filed by the respondent is pending with the Additional District Court, Nagercoil, Kanyakumari District, considering the huge pendency of matrimonial disputes in the Family Court, Chennai, this Court decided that the Principal District Court, Chengalpet, is the appropriate Court for deciding both the petitions.

11. In the light of the above discussions, this Transfer Civil Miscellaneous Petition is ordered. The petition in I.D.O.P.No.114 of 2018 is pending on the file of the Additional District Court, Nagercoil, Kanyakumari District and the petition in O.P.No.4279 of 2018 is pending on the file of the III Additional Family Court, Chennai, are ordered to be withdrawn from the respective Courts and transferred to the file of the Principal District Court, Chengalpet. It is left open to

the learned Principal District Judge, Chengalpet to decide for joint trail or for simultaneous trial. The learned Additional District Judge, Nagercoil, Kanyakumari District and the learned III Additional Judge, Family Court, Chennai, are directed to transmit all the records pertaining to I.D.O.P.No.114 of 2018 and O.P.No.4279 of 2018 respectively, to the file of the Principal District Court, Chengalpet, within a period of two weeks from the date of receipt of a copy of this order. On receipt of records, the learned Principal District Judge, Chengalpet, is directed to dispose of the case as expeditiously as possible. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

sri

To

1.The Additional District Judge, Nagercoil,
Kanyakumari District.

2.The Principal District Judge, Chengalpet.

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

+1cc to Mr.T.N.Sugesh, Advocate, S.R.No.3181

+1cc to Mr.P.J.Anitha, Advocate, S.R.No.3435

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Tr.C.M.P.No.839 of 2018

KAN(CO)
GSP(11/02/2019)

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