

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2019

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THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Tr.C.M.P.No.918 of 2018
and C.M.P.No.22638 of 2018

E.Vanitha

..

Petitioner

versus

S.Sivaram Kumar

..

Respondent

Prayer: Petition is filed under Section 24 of C.P.C., to withdraw F.C.O.P.No.346 of 2018 pending on the file of the Family Court, Salem and transfer the same to the file of the Family Court, Dharmapuri, to be tried along with the Petition in F.C.M.C.No.73 of 2018 pending on its file.

For Petitioner : M/s.D.Kumari
for Mr.C.Prabakaran

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. F.C.O.P.No.346 of 2018 pending on the file of the Family Court, Salem and transfer the same to the file of the Family Court, Dharmapuri, to be tried along with the Petition in F.C.M.C.No.73 of 2018 pending on its file.

2. The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was solemnized on 04.06.2017 at Arupadai Murugan Kovil, Yercaud Adivaaram, Salem, as per Hindu rites and customs. After the marriage, both the petitioner and respondent were set up the matrimonial home at Salem and they were lived together for a considerable period. After some time, from the date of marriage, difference of opinion arose between the petitioner and respondent, resultantly, the petitioner left the matrimonial home and residing along with her parents at Dharmapuri. Further, at the time of separation, the petitioner was studying M.Sc. at Dharmapuri Arts and Science College without any income.

3. After leaving the matrimonial home by the petitioner, the respondent has filed a petition against the petitioner before the Family Court, Salem, under Section 13(1) (III) of the Hindu Marriage Act, 1955, for annulling the marriage. The said petition is now pending before the Family Court, Salem, as F.C.O.P.No.346 of 2018.

4. After knowing the particulars of the above case, the petitioner has filed a petition against the respondent before the Family Court, Dharmapuri, under Section 125 Cr.P.C., for the relief of maintenance. The said petition is now pending before the Family Court, Dharmapuri as F.C.M.C.No.73 of 2018. In the said circumstances, the petitioner has approached this Court by way of filing the present Transfer Civil Miscellaneous Petition for the relief as stated supra.

5. The learned counsel appearing for the petitioner would contend that since the petitioner is studying, she is not having any income, further, her age old parents has also not having any sufficient income to maintain themselves as well as to maintain the petitioner. Since the distance between her parents residence and Salem is about 70 kilometers, being a lady, it is very difficult for her to go to Salem to attend the Court proceedings. Further, she is depending on her parents for her day-to-day needs and for litigation expenses. She would further contend that, if the said petitions are tried separately, there may be a chance for coming out the conflicting decisions and multiplicity of proceedings.

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

7. In respect to the respondent, he was served with Court notice as early as on 31.12.2018 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.

8. 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 in Dharmapuri without any independent income, she has specifically stated that, she is depending on her parents for her day-to-day needs. Further, in the affidavit filed by the petitioner she has specifically stated that, if the two petitions are tried separately, there may be a chance for coming out the conflicting decisions and multiplicity of proceedings.

9. 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.

10. 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.

11. 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 F.C.O.P.No.346 of 2018 from the file of the Family Court, Salem to the file of the Family Court, Dharmapuri is necessary for avoiding the above said situation.

12. In the result, the Transfer Civil Miscellaneous Petition is ordered. The petition in F.C.O.P.No.346 of 2018 is ordered to be withdrawn from the file of the Family Court, Salem and transferred to the file of the Family Court, Dharmapuri. It is left open to the learned Judge, Family Court, Dharmapuri, to decide for joint trial or for simultaneous trial. The learned Judge, Family Court, Salem, is directed to transmit all the records pertaining to F.C.O.P.No.346 of 2018 to the file of the Family Court, Dharmapuri, 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, Dharmapuri, is directed to dispose of the case as expeditiously as possible. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

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To

Sub Assistant Registrar

1.The Judge, Family Court, Salem.

2.The Judge, Family Court, Dharmapuri.

Tr.C.M.P.No.918 of 2018
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KAN(CO)
SSM(19/02/2019)