



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.03.2019

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

TR. C.M.P(MD) .No.71 of 2019

and

C.M.P(MD)No.1735 of 2019

R.Kavitha

... Petitioner/Respondent

Vs.

K.Selvaraj

... Respondent/Petitioner

PRAYER:- Transfer Civil Miscellaneous Petition filed under Section 24 of the Civil Procedure Code, 1908, praying to withdraw H.M.O.P.No.264 of 2017 on the file of the III- Additional Subordinate Court, Madurai and transfer the same to the file of the Subordinate Court, Periyakulam, Theni District.

For petitioner :Mr.C.Christopher

For respondent :Mr.R.Devaraj

ORDER

This Transfer Civil Miscellaneous Petition has been filed by the petitioner / wife seeking transfer of H.M.O.P.No.264 of 2017 from the file of the III-Additional Subordinate Court, Madurai to the file of the Subordinate Court, Periyakulam, Theni District.

2. The learned counsel for the petitioner submitted that the petitioner was a widow and on 10.02.2016 she was given in second marriage to the respondent, who was a widower and who has one unmarried daughter aged about 20 years and two sons aged about 17 and 18 respectively at the time of marriage. After marriage, both of them lived happily for some time. Later, due to misunderstanding, the respondent herein / husband of the petitioner filed a petition in H.M.O.P.No.264 of 2017 on the file of the III-Additional Subordinate Court, Madurai, seeking divorce with the false allegations. The grievance of the petitioner is that the respondent being a resident of Madurai has filed the above divorce petition on the file of the III-Additional Subordinate Court, Madurai, whereas the petitioner is residing at Periyakulam, along with her aged mother and as she is depending upon her aged mother and she has to take care of her aged mother, it is very difficult for her to travel from Theni to Madurai for attending each and every hearing of the case. Thus, he prayed to allow this petition.

3. The learned counsel appearing for the respondent submitted that the respondent has to take care of his children and aged mother, whose right leg below knee amputated very recently. However, he submitted that this Court may transfer the case to the file of the Subordinate Court, Theni, instead of Subordinate Court, Periyakulam. He would further submit that the Court below may be directed to dispose of the case within a stipulated time.

4. The learned counsel appearing for the petitioner also fairly conceded to the same.

5. Heard the learned counsel for both sides and perused the materials available on record.

6. In view of the above and also considering the decision of the Hon'ble Supreme Court in the judgment reported in **2008 (9) SCC 353 (Arti Rani @ Pinki Devi and another Vs. Dharmendra Kumar Gupta)**, has held that convenience of woman is to be taken into consideration first at the time of considering transfer application, this Court is inclined to allow this Transfer Civil Miscellaneous Petition. Accordingly, this petition is allowed with the following directions:

i) The learned III-Additional Subordinate Judge, Madurai is directed to transmit the entire records in H.M.O.P.No.264 of 2017 to the file of the Subordinate Court, Theni, within a period of two weeks from the date of receipt of copy of this order.

ii) The learned Subordinate Judge, Theni, after obtaining the records on transfer, is directed to dispose of H.M.O.P.No.264 of 2017 on merits and in accordance with law, as expeditiously as possible, preferably within a period of six months from the date of receipt of the records.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (writs)

// True Copy //

Sub Assistant Registrar

To

- 1.The III-Additional Subordinate Judge, Madurai.
- 2.The Subordinate Judge, Theni.

1 CC to M/s.K.APPADURAI, Advocate (SR-54059[F] dated 14/03/2019)

+1 CC to M/s.R.DEVARAJ, Advocate (SR-54248[F] dated 15/03/2019)