



WEB COPY

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.507 of 2018

and

C.M.P(MD)No.11910 of 2018

S.Kalaivani

... Petitioner

Vs.

1.K.R.Ashok Menaksha

2.M.Kathiresan

3.Rohini Ammal

... Respondents

PRAYER:- Transfer Civil Miscellaneous Petition filed under Section 24 of the Civil Procedure Code, 1908, praying to withdraw H.M.O.P.No.319 of 2017 from the file of the Third Additional Sub Court, Madurai and transfer the same to the file of the Sub Court, Mettupalayam for joint trial along with H.M.O.P.No.117 of 2017.

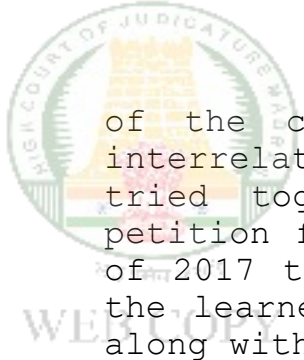
For Petitioner : Mr.A.R.Sethupathy

For Respondent : No appearance

ORDER

This Transfer Civil Miscellaneous Petition has been filed by the petitioner / wife seeking transfer of H.M.O.P.No.319 of 2017 from the file of the Third Additional Sub Court, Madurai to the file of the Sub Court, Mettupalayam to try along with H.M.O.P.No.117 of 2017.

2.It is stated in the petition that the marriage between the petitioner and the first respondent was solemnized on 25.05.2012. After marriage, both of them lived happily for some time and they blessed with a male child and the child is now aged about 5 years. Now, the first respondent is in abroad. Later, due to misunderstanding, the first respondent herein / husband of the petitioner, through his father viz., second respondent herein, filed H.M.O.P.No.319 of 2017 before the Third Additional Sub Court, Madurai for dissolution of marriage. The petitioner / wife also filed H.M.O.P.No.117 of 2017 before the Sub Court, Mettupalayam for restitution of conjugal rights. The grievance of the petitioner is that the petitioner is residing at Mettupalayam, along with her aged parents and as she is depending upon her aged parents, it is very difficult for her to travel about 300 kms along with her child from Mettupalayam to Madurai for attending each and every hearing



of the case. Further the issue involved in both the cases interrelated to each other and therefore, both the cases have to be tried together and therefore, she requested to transfer the petition filed by the first respondent / husband in H.M.O.P.No.319 of 2017 to the file of the Sub Court, Mettupalayam and to direct the learned Sub Judge, Mettupalayam to try H.M.O.P.No.319 of 2017 along with H.M.O.P.No.117 of 2017, which is pending on his file.

3.The learned counsel for the petitioner reiterated the averments made in the petition.

4.Despite notice is ordered, the notice sent to the first respondent has been returned as 'left India' and the notice sent to the respondents 2 and 3 have been returned as 'unclaimed'. This Court also directed the petitioner to serve notice to the learned counsel, who appeared for the respondents before the Court below and the learned counsel has also refused to receive the same.

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

6.The petitioner filed H.M.O.P.No.117 of 2017 for restitution of conjugal rights before the Sub Court, Mettupalayam. The first respondent filed H.M.O.P.No.319 of 2017 for dissolution of marriage, before the Third Additional Sub Court, Madurai. As rightly stated by the learned counsel for the petitioner, the issue involved in both the cases are interrelated to each other and therefore, the same should be tried together. The joint trial would not only save the valuable time of the parties but also the Court. It is seen that the petitioner / wife is residing at Mettupalayam and the respondent / husband is working in abroad. 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. In view of the above, I am inclined to allow this petition and to transfer H.M.O.P.No.319 of 2017 to the file of the Sub Court, Mettupalayam for joint trial with H.M.O.P.No.117 of 2017.

7.In view of the above, this Transfer Civil Miscellaneous Petition is allowed with the following direction:

i)The learned Third Additional Sub Judge, Madurai is directed to transmit the entire records in H.M.O.P.No.319 of 2017 to the file of the Sub Court, Mettupalayam, within a period of two weeks from the date of receipt of copy of this order.

ii)The learned Sub Judge, Mettupalayam, after obtaining the records on transfer, is directed to tag H.M.O.P.No.319 of 2017 along with H.M.O.P.No.117 of 2017 which is pending on his file, conduct joint trial and dispose of the same on merits and in accordance with law, preferably within a period of six months from the



date of receipt of records relating to H.M.O.P.No.319 of 2017.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

smn

To

1.The Third Additional Sub Judge,
Madurai.

2.The Subordinate Judge,
Mettupalayam.

+1CC TO MR.T.R.SUBRAMANIAN, Advocate Sr. No. 53895

ORDER MADE IN
TR.C.M.P (MD) No.507 of 2018
and
C.M.P (MD) No.11910 of 2018
14.03.2019

TR (06.04.2019) 3P 4C