



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.08.2019

CORAM:

THE HONOURABLE **MR. JUSTICE S. S. SUNDAR**

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TR CMP(MD)No.17 of 2019

and

CMP(MD)No.492 of 2019

Sudha

: Petitioner

Vs.

R.Sivakumar

: Respondent

Prayer: Petition filed under Section 24 of Civil Procedure Code, to withdraw the H.M.O.P.No.31 of 2018 on the file of Subordinate Court, Kangayam and to transfer the same to the file of any Subordinate Court, Dindigul.

For Petitioner : Mr.R.Sureshkumar

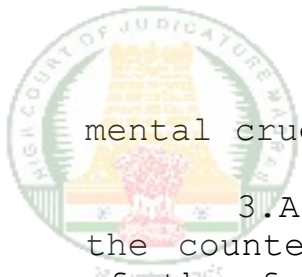
For Respondent : Mr.M.J.Shabu Jase

for M/s.Isaac Chamber

ORDER

This transfer miscellaneous petition is filed by the wife to withdraw the proceedings in H.M.O.P.No.31 of 2018 on the file of the Sub Court, Kangayam and to transfer the same to the Sub Court, Dindigul.

2.The marriage between the petitioner and her husband took place on 07.12.2018, at Paranjervali, Kangayam Taluk. The husband filed a petition for divorce in H.M.O.P.No.11 of 2017 on the file of Sub Court, Dharapuram. It is admitted that the said proceedings was transferred to the Sub Court, Kangayam and renumbered as H.M.O.P.No.43 of 2017. It is stated that the wife filed a transfer petition in Tr.O.P.No.35 of 2018 before the Principal District Court, Thiruppur. It is stated that the respondent has withdrawn the proceedings in H.M.O.P.No.43 of 2017 on 23.03.2018 and the husband has once again filed another petition in H.M.O.P.No.31 of 2018, on the file of the Sub Court, Kangayam for declaration that the marriage between the petitioner and the respondent is null and void under Section 12 (1) (a) of Hindu Marriage Act. Since the husband withdrew the earlier petition and presented another petition without any reasonable cause, the petitioner described the petition filed by the husband as a vexatious litigation to harass the wife. The petitioner has also made some allegations against the husband and alleged that the husband had driven her out from the matrimonial home and thereby caused physical and



mental cruelty.

3.A counter affidavit has been filed by the respondent. In the counter affidavit though several allegations were made, some of the facts are relevant to the issue that is now falls for consideration in the petition filed by the petitioner for transfer. The respondent specifically pleaded that the petitioner has voluntarily left the matrimonial home without giving any hope for reunion. It is stated that the petitioner admitted her first marriage with one Malliswaran. Though it is admitted that the petitioner had contracted earlier marriage with one Malliswaran, it is contended by her that the said marriage was dissolved in a manner that was recognized by custom.

4.It is also stated by the husband/respondent that the wife had agreed for dissolution of marriage and therefore, an agreement for dissolution of marriage was entered into on 14.01.2016. Though the said agreement contemplate filing of a divorce petition before the concerned Court, the petitioner did not come forward to file a petition as it was agreed. It is further stated that the petitioner came to the respondent's house out of compulsion by her family members and that her first marriage is not legally dissolved. Since this fact was not confirmed by records, the petitioner made it clear that she cannot live with him anymore and hence, another agreement for dissolution of marriage was entered into on 09.03.2016 with a condition to file an appropriate petition for dissolution of marriage by mutual consent before the competent Court. Though the subsequent agreement was also witnessed and executed in the presence of witnesses, who are the petitioner's own family members, the respondent states that the petitioner did not come forward to file a proper petition for dissolution of marriage by mutual consent.

5.Quite contrary to the terms of the agreement, it is also admitted that the petitioner/wife has given a police complaint in All Women Police Station, Kangayam on 07.12.2016. Thereafter, the respondent has sent a notice to the petitioner for divorce on 10.12.2016 and filed a petition in H.M.O.P.No.11 of 2017 seeking divorce from the petitioner, on the ground of cruelty. It is also admitted that the petition filed by him earlier was transferred to the Sub Court, Kangayam and renumbered as H.M.O.P.No.43 of 2017.

6.The learned counsel for the respondent states that the petitioner originally filed a petition for divorce. Since the earlier marriage was not dissolved in the manner known to law. The respondent had to withdraw the earlier petition pending in H.M.O.P.No.43 of 2017 and filed a petition in H.M.O.P.No.31 of 2018 on the file of Sub Court, Kangayam under Section 12 (1) (a) of Hindu Marriage Act for declaring the marriage as null and void. It



is also stated by the respondent/husband that the petitioner is working as a teacher in a private school and that the petition for transfer is filed only to drag on the proceedings and to pressurise the husband to yield to her illegal demands.

7. It is in the said context, the respondent has specifically pleaded that the petitioner had demanded a sum of Rs.25 lakhs for settling the issue, despite the fact that the petitioner has no interest to come and live with the husband and had signed the agreement for dissolution of marriage through Court twice in the presence of her own relatives and men.

8. It is in the said circumstances, narrated in the counter affidavit filed by the respondent, the counsel for respondent requested this Court to dismiss this petition for transfer.

9. The learned counsel for the respondent states that there is no bonafides in the transfer civil miscellaneous petition. It is also contended by the learned counsel for the respondent that the petitioner was not present, when the matter was posted for hearing before the lower Court. Therefore, it is submitted that the transfer civil miscellaneous petition is filed for extraneous reasons.

10. This Court considered the rival submissions. The agreement signed between the petitioner and the respondent on two earlier occasions are not disputed. The conduct of the wife to give a police complaint, after signing the two successive agreements shows that all is not well with the petitioner/wife. The petitioner had married another person earlier and the dissolution of earlier marriage is not evidenced by document. The said fact is also not disputed. The only issue that arises for consideration in the petition in H.M.O.P.No.31 of 2018, is whether the earlier marriage was dissolved in the manner known to law.?

11. The agreement signed by the petitioner would clearly show that the petitioner is not interested in continuing the matrimonial relationship with the respondent. After taking the decision, the petitioner has unnecessarily given a false complaint and later filed this petition. Having regard to the nature of conduct of the petitioner, this Court is of the view that the petitioner wants to drag on the proceedings, despite she has agreed to dissolve the marriage in the presence of her close relatives and friends. It shows that the litigation is now being dragged on only because the ill-advice given to the petitioner.

12. This Court repeatedly has held that the wife's convenience is relevant in a petition filed by the husband against her under the Hindu Marriage Act. However, this Court is not



inclined to extend the same principle in the present case. Having regard to the peculiar circumstances of the case, since the conduct of the petitioner shows that her intention was to drag on the proceeding unnecessarily, the petitioner does not deserve any sympathy.

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13.As a result, this Petition for transfer is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

das

To

1.The Subordinate Judge, Kangayam.

2.The Section Officer, V.R. Section,-2 copies
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R.SURESHKUMAR, Advocate (SR-81704[F] dated 14/08/2019)

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-81843[F] dated 16/08/2019)

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