

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2020

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THE HONOURABLE MR.JUSTICE T.RAJA

Tr.C.M.P.No.162 of 2020

Dr.Josphin Amala

.. Petitioner

-vs-

Dinesh

S/o Mr.Stanislaus

.. Respondent

Transfer Civil Miscellaneous Petition filed under Section 24 of the Civil Procedure Code, to withdraw the I.D.O.P.No.375 of 2019 pending on the file of the Principal District Court, Nagercoil and transfer the same to the file of the Hon'ble City Civil Court at Chennai or Family Court at Chennai.

For Petitioner :: Mr.P.Ebenezer Paul

For Respondent :: Mr.C.K.M.Appaji

ORDER

Heard learned counsel for the parties through video conferencing due to the Covid-19 pandemic.

2. Dr.Josphin Amala, the petitioner herein married Mr.Dinesh, the respondent herein on 24.10.2005 as per the Christian rites and customs prevailing in the Christian society at Immaculate Heart of Mary Church, Maniyarankuntu, Amsi, Thengapattanam post, Kanyakumari District in the presence of well wishers of both the families and they lived at Nagercoil for sometime. Out of the wedlock, two children, namely, one daughter and one son were also born to them, who are aged about 13 years and 8 years respectively now. Thereafter, the respondent went to Saudi Arabia for employment, but he was unable to continue his job due to the mental illness. It is also stated by the learned counsel for petitioner that a psychiatrist at Chennai, after diagnosing the respondent, also gave a report on 29.12.2008 stating that the respondent is suffering from schizophrenia. Although the respondent was also treated for psychosis for some time, he was irregular in taking the treatment. As the petitioner is also a homeopathy doctor, she advised the respondent to continue his treatment, but he did not listen to her, as a result the petitioner was put to mental

agony. Finally, the respondent left the petitioner at Chennai and filed the I.D.O.P.No.375 of 2019 before the Principal District Court, Nagercoil seeking restitution of conjugal rights. Learned counsel for the petitioner, relying heavily on the judgment of the Supreme Court in Sunitha Singh v. Kumar Sanjay (2001) 10 SCC 41 holding that the convenience of the wife must be taken into account when the husband has filed the matrimonial suit, has pleaded that in the present case also, the convenience of the petitioner/wife and her two children have to be taken into account. While this being the ruling of the Supreme Court, the I.D.O.P.No.375 of 2019 pending on the file of the Principal District Court, Nagercoil may be transferred to the Family Court at Chennai, as the petitioner is residing at Chennai and taking care of her two children, who are studying in the school at Chennai.

3. Learned counsel appearing for the respondent submitted that the respondent has filed the I.D.O.P.No.375 of 2019 seeking restitution of conjugal rights before the Principal District Court, Nagercoil. Therefore, the petitioner, accepting the reunion, can always come and live with the respondent. He also stated that the respondent is fit for leading the matrimonial life and only the petitioner is calling the respondent as a psychiatric person, when there is no such thing.

4. But the learned counsel appearing for the petitioner stated that as per the psychiatrist's report dated 29.12.2008, the respondent is still having psychiatric problem. Therefore, if he comes to Chennai and continues with the treatment, after full recovery, he can always lead the life with the petitioner.

5. This Court, taking into account that the petitioner can continue the psychiatric treatment for the respondent/husband at Chennai and as per the ratio laid down by the Apex Court in Sunitha Singh v. Kumar Sanjay (2001) 10 SCC 41 holding that the convenience of the wife must be taken into account when the husband has filed the matrimonial suit, is inclined to accept the prayer of the petitioner. Accordingly, the transfer civil miscellaneous petition stands allowed and the I.D.O.P.No.375 of 2019 is withdrawn from the file of the Principal District Court, Nagercoil and transferred to the file of the Family Court at Chennai for an expeditious disposal on merits. Consequently, C.M.P.No.5372 of 2020 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

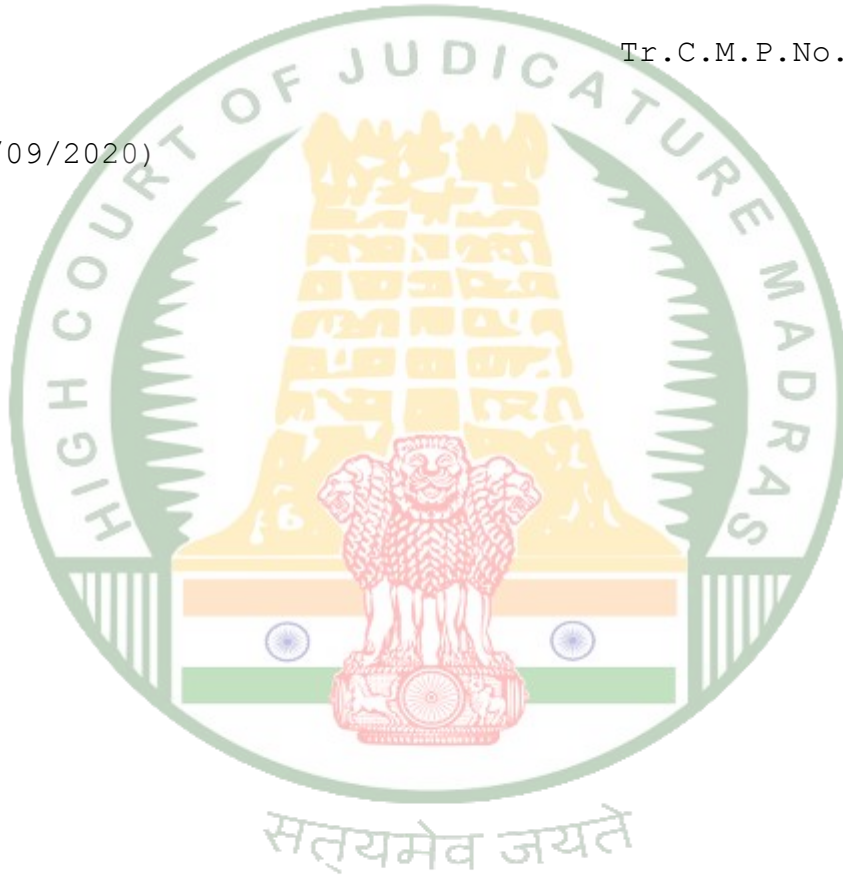
1. The Principal District Judge
Nagercoil.

2. The Family Court Judge
Chennai.

+1 cc to Mr.P.Ebenezer Paul, Advocate Sr.No.26817

Tr.C.M.P.No.162 of 2020

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