

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.11.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

Tr.C.M.P. No.468 of 2020 and C.M.P. No.11222 of 2020

Thangaraj

.. Petitioner

-vs-

Mutharasi

.. Respondent

Prayer: Petition filed under Section 24 of C.P.C. to withdraw and transfer the H.M.O.P. No.132 of 2020 pending on the file of the Family Court, Thanjavur and to transfer the said case to the Family Court, Dharmapuri.

For Petitioner : Mr.V.Sakkarapani

For Respondent : Mr.K.Jayaraman

O R D E R

Thangaraj, the petitioner herein has filed this petition for transfer of H.M.O.P. No.132 of 2019 pending on the file of the Family Court, Thanjavur to the file of the Family Court, Dharmapuri.

2.Learned counsel appearing for the petitioner would submit that after solemnisation of marriage on 22.01.2018 as per Hindu rites and customs at Thirupathi Tirumala Devasthanam between the petitioner and the respondent, they started living happily in the petitioner's house. Thereafter, the respondent became pregnant and went to her parent's house for delivery and through wedlock, a female child was born on 22.12.2018. Since the respondent stayed in her parent's house after delivery, the petitioner used to go to the respondent's parents house to see his child, but the respondent without any reason scolded the petitioner in front of neighbours and other relatives and insisted him for separate house. Subsequently, the respondent, suppressing the real facts, filed a petition in H.M.O.P. No.132 of 2020 before the Family Court, Thanjavur for divorce on untenable grounds under Section 13 (1)(ia) of the Hindu Marriages Act, which is not having jurisdiction because the marriage took place at Thirupathi Tirumala Devasthanam on

22.01.2018. When both of us resided in the matrimonial home at Dharmapuri District, she cannot go to Thanjavur and stay with her maternal uncle and file a petition for divorce on the file of the Family Court, Thanjavur. Learned counsel for the petitioner further submitted that the allegation made in the H.M.O.P. No.132 of 2020 shows that even during the Covid-19 pandemic situation, the petitioner's family used to come to Thanjavur, where she was staying and create more problem. Since the lock down announced only in the month end of March 2020, she cannot say that even during that period the family members of her husband came to her place to give trouble to her. Therefore, the learned counsel for the petitioner prays for transfer of the H.M.O.P. No.132 of 2020 from the Family Court, Thanjavur to the Family Court, Dharmapuri.

3.Mr.K.Jayaraman, learned counsel for the respondent, opposing the above prayer, submitted that when Court notice has been served only on the Thanjavur address given by the petitioner, it is not open to the petitioner to say that the Family Court, Thanjavur does not have jurisdiction. Moreover, on the date of presentation of the petition, the respondent wife was living in Thanjavur with her maternal uncle. Therefore, as per Section 19 of the Hindu Marriage Act 1955, the petition can be proceeded before the Family Court, Thanjavur.

4.It is useful to refer to Section 19 of the Hindu Marriage Act, 1955 which is extracted as under:

'19.Court to which petition shall be presented - Every petition under this Act shall be presented to the District Court within the local limits of whose ordinary original civil jurisdiction-

(i)the marriage was solemnized, or
(ii)the respondent, at the time of the presentation of the petition, resides, or
(iii)the parties to the marriage last resided together, or

(iii-a)in case the wife is the petitioner, where she is residing on the date of presentation of the petition, or

(iv)the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is, at that time, residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years or more by those person who would naturally have heard of him if he were alive.'

5.A reading of above Section 19 shows that every petition can be presented to the District Court within the local limits of whose ordinary original civil jurisdiction the marriage was

solemnised. No doubt, the marriage in the present case was solemnised at Thirupathi Tirumala Devasthanam. Secondly, Section 19(ii) says that the petition can be presented within the local limits of whose ordinary original civil jurisdiction, at the time of the presentation of the petition, the respondent resides. Therefore, when the husband respondent in H.M.O.P. No.132 of 2020 resides in Dharmapuri District, the Family Court, Thanjavur does not have jurisdiction. As per Section 19(iii), the petition can be presented to the District Court within the local limits of whose ordinary original civil jurisdiction the parties to the marriage last resided together and in the present case, the parties are resided at Dharmapuri District. However, Section 19(iii-a) says that in case, the wife is the petitioner, the petition can be presented to the District Court within the local limits of whose ordinary original civil jurisdiction where she is residing on the date of presentation of the petition. As rightly contended by the learned counsel for the respondent, on the date of presentation of the petition, the respondent wife being a petitioner in H.M.O.P. No.132 of 2020 has been living in Thanjavur with her maternal uncle. Therefore, as per Section 19 (iii-a) of the Hindu Marriage Act 1955, the petition can be proceeded before the Family Court, Thanjavur. Hence, finding no merits in this petition, this Court is inclined to dismiss the petition. Accordingly, the petition fails and the same is dismissed. Consequently, C.M.P. No.11222 of 2020 is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vga

To

1.The Family Court,
Thanjavur.

2.The Family Court,
Dharmapuri.

Tr.C.M.P. No.468 of 2020 and C.M.P. No.11222 of 2020

PM(CO)

RMP(15/12/2020)