

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

Tr.C.M.P.Nos.559 & 560 of 2020

K.Priya ..Petitioner in both Tr.CMPs

Vs.

T.Ravi Yadav

..Respondent in both Tr.CMPs

Prayer in both Tr.C.M.Ps: These petitions filed under Section 24 of CPC, to withdraw and transfer the H.M.O.P.No.149 of 2020, on the file of Sub-Court, Alandur and G.W.O.P.No.50 of 2020, on the file of Principal District and Sessions Court, Chengalpattu to the file of Family Court, Vellore.

In both Tr.C.M.Ps

For Petitioner : Mr.G.M.Shankar

For Respondent : No appearance

ORDER

These transfer civil miscellaneous petitions are filed to withdraw and transfer the H.M.O.P.No.149 of 2020, on the file of Sub-Court, Alandur and G.W.O.P.No.50 of 2020, on the file of Principal District and Sessions Court, Chengalpattu to the file of Family Court, Vellore.

2. The marriage between the petitioner and the respondent was solemnized on 02.03.2015 as per Hindu Rites and Customs. A female child born from and out of the wedlock. The petitioner and the respondent started their matrimonial life happily. On account of certain misunderstanding, the petitioner was forced to leave the matrimonial home. The petitioner gave a complaint in All Women Police Station, Madipakkam to initiate action against the respondent and her in-laws. Various allegations are raised in the present petition which cannot be adjudicated in this transfer petition and it is for the parties to adjudicate the same before the Court concerned.

3. As far as the transfer petitions are concerned, it is contended that the petitioner is unemployed and she has to

look after the minor girl child. Further, the respondent filed H.M.O.P.No.149 of 2020 for restitution of conjugal rights. Though the respondent filed a case before the Sub Court, Tambaram, subsequently, the case was transferred to Sub Court, Alandur on the ground of jurisdiction. Now, H.M.O.P.No.149 of 2020, is pending before the Sub Court, Alandur.

4. The learned counsel for the petitioner states that the petitioner filed M.C.No.8 of 2020, before the Family Court, Vellore and the said petition is pending. The petitioner has no means to spend and she is depending on her aged parents. She has to look after her girl child also. Therefore, she is not in a position to travel all along from Vellore to Chennai to contest her case. Therefore, the principles governing the transfer of matrimonial case are to be considered.

5. The principles regarding transfer petitions, more specifically in the matters of matrimonial cases are well settled through the decisions of the High Court of Madras, in the following cases:-

"(i) The Hon'ble Division Bench of the High Court of Madras in W.A.No.1181 of 2009, dated 09.07.2010 has held as follows:-

"21. The domicile or citizenship of the opposite party is immaterial in a case like this. In case the marriage was solemnized under Hindu Law marital relationship is governed by the provisions of the Hindu Marriage Act. Therefore, Section 19 has to be given a purposeful interpretation. It is the residence of the wife, which determines the question of jurisdiction, in case the proceeding was initiated at the instance of the wife.

22. While considering a provision like Section 19 (iii-a) of the Hindu Marriage Act, the objects and reasons which prompted the parliament to incorporate such a provision has also to be taken note of. Sub Clause (iii-a) was inserted in Section 19 with a specific purpose. Experience is the best teacher. The Government found the difficulties faced by women in the matter of initiation of matrimonial proceedings. The report submitted by the Law Commission as well as National Commission for Women, underlying the need for such amendment so as to enable the women to approach the nearest jurisdictional court to redress their matrimonial grievances, were also taken note of by the Government. Therefore such a beneficial

provision meant for the women of our Country should be given a meaningful interpretation by Courts.'

(ii) In yet another case in TR.CMP.Nos.138 and 139 of 2006, dated 30.08.2006, the High Court of Madras has considered the following judgments:-

'16.In AIR 2000 SC 3512 (1) (Mona Aresh Goel vs. Aresh Satya Goel), when the wife pleaded that she was unable to bear the traveling expenses and even to travel alone and stay at Bombay, the Supreme Court ordered transfer of proceedings.

In 2000 (10) SCC 304, the Honourable Supreme Court has held that where the petitioner's wife has pleaded lack of money, the same has to be considered.

In 2000 (9) SCC 355, the wife has filed a petition to transfer the proceedings initiated by the husband for divorce, at Bombay. The place of residence of the wife was at Jaipur, Rajasthan. In that case, the petitioner is having a small child and that she pleaded difficulty in going all the way from Jaipur to Bombay to contest the proceedings from time to time. Considering the distance and the difficulties faced by the wife, the Supreme Court has allowed the transfer petition.

In a decision reported in 2005 (12) SCC 395, the wife has sought for transfer of matrimonial proceedings and a divorce petition has been filed by the respondent's husband at Baikunthpur to be transferred to Allahabad, where the petitioner's wife was residing, on the ground that it would be difficult for her to undertake such long distance journey, particularly in circumstances, in which she finds that the proceedings under Section 125 Cr.P.C. was already pending before the Family Court, Allahabad. Considering the difficulties faced by the wife and also the long distance journey, the Honourable Supreme Court was pleased to order transfer of the proceedings to Allahabad.

(iii) In a decision made in TR.CMP(MD)No.108 of 2010, dated 03.03.2011, the Madurai Bench of Madras High Court, has observed as below:-

'18.It is true that section 19 of the Hindu Marriage Act, has been amended

by insertion of proviso of (iii)(a) to section 19. Of Course, this amended section 19(iii)(a) gives special preference to the wife to file a petition or defending the case of the husband before the Court within whose jurisdiction she resides. The intention of the legislator is to safe-guard the interest and rights of the women, who are being subjected to harassment and cruelty. But this special preference conferred under section 19(iii)(a) of the Hindu Marriage Act shall not be used to wreck vengeance on the husband. There must be a justifiable cause to select the jurisdiction of the Court where she resides."

6. In view of the facts and circumstances, H.M.O.P.No.149 of 2020, now pending before the Sub Court, Alandur stands transferred to Family Court, Vellore.

7. The respondent filed G.W.O.P.No.50 of 2020 on the file of the Principal District Sessions Court, Chengalpattu. In view of the fact that the matrimonial case between the parties in H.M.O.P.No.149 of 2020, is transferred before the Sub Court, Vellore, the present G.W.O.P. is also to be transferred to the Principal District and Sessions Judge at Vellore, enabling the parties to adjudicate all the cases before the same Court premises. Accordingly, G.W.O.P.No.50 of 2020 pending before the Principal District and Sessions Court, Chengalpattu stands transferred to Family Court, Vellore, to be tried along with H.M.O.P.No.149 of 2020 and M.C.No.8 of 2020.

8. Accordingly, these Transfer Civil Miscellaneous Petitions stand allowed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsk

To

1.The Sub-Court,
Alandur.

2.The Principal District and Sessions Court,
Chengalpattu.

3.The Family Court,
Vellore.

+2ccs to Mr.G.M. SANKAR, Advocate, S.R.No.6164

GP(CO)
SM/05/03/2021

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