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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATE: 14.9.2021.
CORAM
THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Transfer C.M.P.(MD) No.285 of 2021
and
C.M.P.(MD) No.6050 of 2021

Mekala

Petitioner/2nd Respondent

vs.

1. Chinniah
2. Minor Aadhavan
3. Minor Agilan
4. Chockalingam

Respondents 1 to 3/ petitioner 1 to 3
4th Respondent/1st respondent

Transfer C.M.P.(MD) filed under Section 24 of CPC to withdraw the case in G.W.O.P.No.11 of 2020 from the file of the Family Court, Sivagangai and transfer the same to the Family Court, Ramanathapuram.

For Appellant : Mr.No appearance
For RR1 to 3 : Mr.S.Vanchinathan

ORDER

When the matter was taken up for hearing, there was no representation for the petitioner.

2. The petition has been filed seeking to withdraw the case in G.W.O.P.No.11 of 2020 from the file of the Family Court, Sivaganga and transfer the same to the Family Court, Ramanathampuram.

3. It is the case of the petitioner herein that the marriage between herself and the fourth respondent herein was solemnized on 8.2.2007 at Shanmuganathan Temple, Kundrakudi in the presence of elders of both the families and that after the marriage, she resided at the house of the husband at Chandiranpatti Village. The further case of the petitioner is that from the date of marriage itself, she was harassed by her husband and her in laws, however, only on the advice of her parents, she had continued her marital life with the fourth respondent.

4. It is the further case of the petitioner that out of the wedlock, she gave birth to her first son Aadhavan on 4.4.2009 and the second son Agilan on 27.11.2011 and even after the birth of the children, the fourth respondent and his family members did not change their attitude and the petitioner was attacked by the fourth



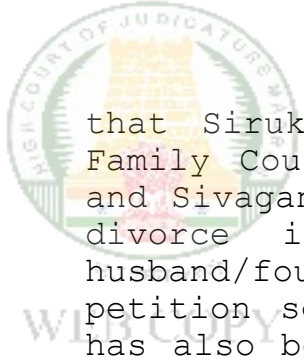
respondent on the instigation of the first respondent, father in law and despite the intervention of the elders of the family, the fourth respondent did not change his attitude.

5. It is further contended by the petitioner that on 16.11.2019, the first and fourth respondent had forcibly driven the petitioner from the matrimonial home and thereby she had lodged a complaint with the competent police station seeking the custody of the children and during the police enquiry, the first and fourth respondent refused to hand over custody of the children to the petitioner and thereafter, the fourth respondent also filed Petition seeking divorce in the Family Court, Sivaganga and thereafter, the petitioner had filed a petition in Transfer C.M.P.(MD) No.129 of 2020, however, the same was dismissed for default on 20.1.2021 and the petitioner is taking steps to restore the above case.

6. It is further contended by the petitioner that in the meanwhile, the first respondent and fourth respondent colluded with each other and the first respondent had filed G.W.O.P.No.11 of 2020 before the Family Court, Sivaganga to declare him as the natural guardian of the minor children of the petitioner. It is the case of the petitioner that in the said petition, the first respondent had made false, fabricated and concocted stories with an intention to separate the children from the petitioner. The petitioner had stated that she is living at Sirukudi Village, Sevvaipettai Post, Thiruvadanai Taluk, Ramanathapuram District and she finds it very difficult to attend the proceedings in the Family Court, Sivaganga as she had to travel about 75 kms from her residence and thereby, the petition has been filed seeking to transfer the case to the Family Court, Ramanathapuram.

7. The learned counsel for respondents 1 to 3 would submit that the first respondent herein is the father in law and the fourth respondent herein is the husband of the petitioner and since the petitioner had committed cruelty on the fourth respondent, the fourth respondent had filed a petition for divorce in H.M.O.P.No.310 of 2019 pending before the Family Court, Sivaganga. He would also submit that earlier a petition had been filed in Transfer C.M.P.(MD) No.129 of 2020 seeking transfer of H.M.O.P.No.310 of 2019 and later, it was dismissed for default. He would further submit that the marriage between the fourth respondent was solemnized on 8.2.2007 and they have two children and the fourth respondent is employed abroad and during the absence of the husband, fourth respondent, the petitioner lived a wayward life and when it was questioned by the fourth respondent, she had left the matrimonial home and therefore, the first respondent had filed G.W.O.P.No.11 of 2020 seeking custody of the minor children.

8. The learned counsel for respondents 1 to 3 would further submit that though transfer of case is sought for, the fact remains



that Sirukudi Village where the petitioner resides is closer to Family Court, Sivaganga and the distance between Sirukudi Village and Sivaganga District is about 42 kms whereas the petition seeking divorce in H.M.O.P.No.310 of 2019 has been filed by the husband/fourth respondent herein at Family Court, Sivaganga and the petition seeking custody of the children in G.W.O.P.No.11 of 2020 has also been filed by the first respondent herein before the same Family Court, Sivagangai and in the event of transfer of the petition seeking custody of the children is transferred to the Family Court, Ramanathapuram, the respondents have to travel about 108 Kms for attending the proceedings in the court and considering the inconvenience that would be caused to the respondents and the minor children, sought for dismissal of the petition.

9. Admittedly, the minor children are with the grandfather, the first respondent herein, who seeks for custody of them. It is claimed that they would have to travel about 108 Kms to attend the hearings. No doubt, in the case of matrimonial disputes, where transfer of cases is sought for, the convenience of the wife has to be predominantly considered by the court. However, in the present case, the interest of the minor school going children also has to be taken into consideration. It is contended that they are living with their grandfather, the first respondent at Chandiranpatti Village.

10. Moreover, it appears that the matrimonial dispute in H.M.O.P.No.310 of 2019 filed by the fourth respondent herein seeking divorce, which was, earlier, sought to be transferred by the petitioner by filing Tr.C.M.P.(MD) No.129 of 2020, similar to the present claim of transfer, is also still pending before the Family Court, Ramanathapuram on dismissal of the said Tr.C.M.P. by this court for non prosecution.

11. Therefore, in the interest of the minor children, whose custody is sought for in G.W.O.P.No.11 of 2020, it may not be appropriate to grant the relief of the transfer of case sought for by the petitioner, rather, this court is of the view that it would be equally convenient for both the parties to attend the proceedings before the Family Court, Sivaganga.

In view of the above, the Transfer C.M.P. is dismissed. No costs. The connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (Cs-II)

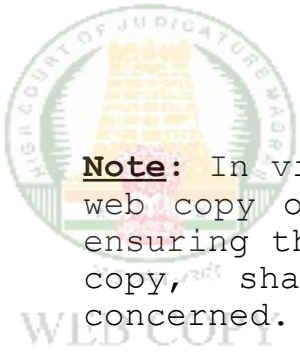
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Sub Assistant Registrar(CS)

ssk.

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Note: In view of the present lock down owing to COVID 19 pandemic, a web copy of the order may be utilised for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. The Presiding Officer,
Family Court,
Sivagangai.
2. The Presiding Officer,
Family Court,
Ramanathapuram.

Transfer C.M.P. (MD) No.285 of 2021
and
C.M.P. (MD) No.6050 of 2021
14.9.2021.

PS (CO)
KB(24.09.2021) 4P 3C