



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :13.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Tr.C.M.P. (MD) No.432 of 2019

and

C.M.P. (MD)No.9925 of 2019

WEB COPY

Akila @ Akilandeswari

... Petitioner

-vs-

Selvaraj

... Respondent

PRAYER: Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw the HMOP No. 284 of 2019 pending on the file of the Principal Sub Court, Pudukottai and transfer to the file of the Family Court, Sivagangai.

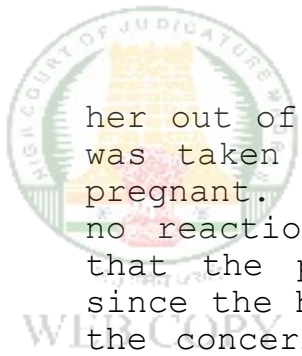
For Petitioner : Mr.R.Srinivasan

For Respondent : No appearance

O R D E R

The present Transfer Civil Miscellaneous Petition is filed to withdraw the HMOP No. 284 of 2019 pending on the file of the Principal Sub Court, Pudukottai and transfer to the file of the Family Court, Sivagangai.

2. The learned counsel for the petitioner would submit that the marriage between the petitioner and the respondent was solemnized on 16.06.2016 as per the Hindu customs and rites at Sasivarna Vinayagar temple, Sivagangai . At the time of marriage due to the compulsion of the respondent family the petitioner's family has given 12 sovereigns of gold jewels, Hero Honda vehicle and household articles worth about Rs.2lakhs to the respondent. The respondent was working in a private concern. After marriage the petitioner and the respondent were living in the matrimonial home. Soon after three months of marriage since the petitioner did not conceive the respondent and his parents started abusing her and compelled her to go back to her parental house. Later the petitioner was left in her parent's house for some time and after the due intervention of the relatives and well wishers of the family the petitioner went back to the house of the respondent. Thereafter the petitioner and the respondent took treatment for infertility at Deepam Hospital, Sivagangai and that even thereafter the petitioner did not get pregnant. Meanwhile the respondent and his relatives started abusing the petitioner for no fault on her. While so, on 03.03.2017 the respondent's parents and his family members abused the petitioner and started quarrel with the petitioner and driven

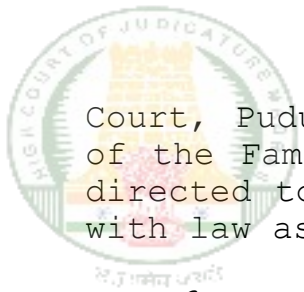


her out of the matrimonial home. After some time, she felt ill and was taken to Deepam Hospital, where it was informed that she was pregnant. When the same was informed to the respondent there was no reaction and the parents of the respondent abused her stating that the petitioner got pregnant through some other persons and since the harassment continued, the petitioner gave complaint before the concerned police station on 21.08.2017 and the police did not take any action. In the mean time the petitioner delivered a male child namely Ishanth at Sivagangai Sabari Hospital on 20.11.2017. Despite the birth of the child the respondent and his family members did not visit the petitioner and did not take care of the petitioner for which she has filed a petition under various provisions of Domestic Violence Act before the learned Judicial Magistrate No.I Sivagangai in D.V.C.No.9 of 2018. Despite summons the respondent has not appeared before the Court. In the meanwhile the respondent had filed HMOP No. 284 of 2019 before the Principal Sub Court, Pudukottai under Section 9 of the Hindu Marriage Act for Restitution of Conjugal Rights. Though the petitioner through relatives has expressed her willingness to join the matrimonial home, the respondent and his family members have refused to take her back, whereas the petition for restitution of conjugal rights has been filed by the respondent to evade payment of maintenance. He would further submit that the parents of the petitioner is not financially well and the petitioner finds it very difficult to travel all the way from Sivagangai to Pudukottai and there is nobody to accompany her. Further she is also unable to engage an advocate at Pudukottai and if the case is transferred to the Family Court, Sivagangai the petitioner will be able to appear in person and contest the case, thereby he seeks transfer of the case from Pudukottai to Sivagangai.

3. Heard the learned counsel for the petitioner. Private notice served, proof filed. None appeared on behalf of the respondent.

4. The Hon'ble Apex Court in the case of ***Vaishali Shridhar Jagtap vs. Shridhar Vishwanath Jagtap*** reported in (2016)14 SCC 356 has held that ***while deciding the transfer of matrimonial proceedings comparative hardship faced by the wife has to be taken into account***. Further in the case of ***Amitha Shah vs- Virendar Lal Shah***, reported in (2003)10 SCC 609 the Hon'ble Supreme Court has held that ***the convenience of the wife and moreso of the child must be taken into account while deciding the petition for transfer***.

5. Considering the facts and circumstances of the case and also considering the submission made by the learned counsel for the petitioner, HMOP No. 284 of 2019 is withdrawn from the file of Principal Sub Court, Pudukottai and transferred to the file of Family Court, Sivagangai for disposal as per law. The Principal Sub



Court, Pudukottai, is directed to transmit the papers to the file of the Family Court, Sivagangai. The Family Court, Sivagangai, is directed to dispose HMOP No.284 of 2019 on merits and in accordance with law as expeditiously as possible.

6. In the result, this Transfer Civil Miscellaneous Petition is allowed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2021

Sub Assistant Registrar(CS)

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To:

1. The Principal Sub Court, Pudukottai

2. The Family Court, Sivagangai

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