

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04-01-2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

Tr.CMP No.1181 of 2022

And

CMP No.20223 of 2022

Preetha

.. Petitioner

vs.

V.Rajasekar

.. Respondent

PRAYER : This Transfer CMP is filed under Section 24 of the Civil Procedure Code, to withdraw the case in HMOP No.74 of 2022 from the file of the Sub Court at Arur, Dharmapuri District and transfer the same to the file of the Sub Court at Salem.

For Petitioner : Mr.R.Kamaraj

For Respondent : Mr.J.Pradeep

ORDER

The present Transfer Civil Miscellaneous Petition is filed to withdraw the case in HMOP No.74 of 2022 from the file of the Sub Court at Arur, Dharmapuri District and transfer the same to the file of the Sub Court at Salem.

2. The marriage between the petitioner-wife and the respondent-husband was solemnised on 01.09.2011 as per Hindu Rites and Customs. Two children were born from and out of the wedlock between the petitioner and the husband and they are now studying in V Standard and UKG respectively at Salem. The children are with the custody of the petitioner-wife.

3. The learned counsel for the petitioner states that the petitioner is unemployed and now residing with her parents at Salem along with the school going children. Thus she is not in a position to travel all along from

Salem to Arur, Dharmapuri District to contest the dissolution of marriage case filed by the respondent in HMOP No.74 of 2022 pending on the file of the Sub Court at Arur, Dharmapuri District.

4. The learned counsel for the petitioner states that the respondent is not even paying the Interim Maintenance to the minor children and the petitioner is depending on her age-old parents even to meet out the livelihood of the minor children. In this regard, the petitioner is at liberty to move an appropriate application before the Competent Court for grant of maintenance and in such an event, the Court has to consider grant of Interim Maintenance without causing any undue delay and the final maintenance to be granted must be determined after adjudication of the matrimonial disputes between the parties.

5. Today, the respondent-husband is present before this Court and given an undertaking that he will handover all the original certificates and other things belong to the petitioner, within a period of one week from today

either in person or through Courier Post.

6. That apart, the petitioner filed HMOP No.171 of 2022 for restitution of conjugal rights on the file of the Sub Court at Thiruppattur. Since the petitioner was temporarily residing at Thiruppattur, she filed a case before the Sub Court at Thiruppattur. At present, the petitioner and the children are residing at Salem along with her parents.

7. In the present case, the transfer of the case is to be considered, since the petitioner is unemployed and taking care of the school going children and she is residing along with her parents at Salem. That being the case, the divorce case filed by the respondent is to be transferred to the place, where the petitioner now resides.

8. The principles regarding transfer petitions, more specifically in the matters of matrimonial cases, are well settled through the three 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, wherein in paragraphs-21 and 22, it has been observed as under:-

"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 of Hon'ble Supreme Court of India:-

"(1). In the case of **Mona Aresh Goel vs.**

Aresh Satya Goel [(2000) 9 SCC 255], 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.

(2) In the case of **Geeta Heera vs. Harish Chander Heera [(2000) 10 SCC 304]**, the Hon'ble Supreme Court has held that where the petitioner's wife has pleaded lack of money, the same has to be considered.

(3) In the case of **Lalita A.Ranga vs. Ajay Champalal Ranga [(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.

(4) In a decision in **Archana Singh vs. Surendra Bahadur Singh [(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, wherein in paragraph-18, it has been 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 safeguard 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."

9. In view of the facts and circumstances, this Court is inclined to transfer HMOP No.74 of 2022 pending on the file of the Sub Court at Arur, Dharmapuri District to the file of the Family Court at Salem forthwith to be tried along with HMOP No.171 of 2022 filed by the petitioner for restitution of conjugal rights pending on the file of the Sub Court at Thiruppattur. Thus, HMOP No.74 of 2022 pending on the file of the Sub Court at Arur, Dharmapuri District and HMOP No.171 of 2022 pending on the file of the Sub Court at Thiruppattur stand transferred to the file of the Family Court at Salem forthwith to be tried jointly. The Sub Court at Arur, Dharmapuri District and the Sub Court at Thiruppattur are directed to transmit the case papers to the Family Court at Salem, within a period of four weeks from the date of receipt of a copy of this order.

10. With the abovesaid directions, the Transfer Civil

Miscellaneous Petition stands allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

04-01-2023

Speaking Order/Non-Speaking Order.

Neutral Citation : Yes/No.

Internet : Yes/No.

Index: Yes/No.

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To

1.The Sub Judge,
Sub Court at Arur,
Dharmapuri District.

2.The Sub Judge,
Sub Court,
Salem.

3.The Sub Judge,
Sub Court,
Thiruppattur.

4.The Judge,
Family Court,
Salem.

S.M.SUBRAMANIAM, J.

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