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Tr.C.M.P(MD)No.375 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.08.2024

Pronounced on : 18.11.2024

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

Tr.C.M.P(MD)No.375 of 2024

and

C.M.P(MD)No.7998 of 2024

Joseph Lydia @ J.Lydia
represented by the power of attorney
and nature father S.Joseph Martin

... Petitioner

Vs.

Primus Anistus Brooks @ P.Anistus Brooks

... Respondent

(Cause title is accepted and S.Joseph Martin is recognized as power agent on behalf of the sole petitioner Joseph Lydia @ J.Lydia vide Court order, dated 05.06.2024 made in C.M.P(MD)Nos.6157 and 6159 of 2024 in Tr.C.M.P(MD)SR.No.26867 of 2024)

PRAYER : Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw the case in O.P.No.856 of 2023 pending on the file of the Family Court, Kaniyakumari District at Nagercoil and transfer the same to any other Family Court in Chennai District.

For Petitioner : Mr.K.Natarajan

For Respondent : Mr.M.R.Sreenivasan



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ORDER

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2. The petitioner is the wife of the respondent. The marriage between the petitioner and the respondent was solemnized on 29.12.2011. Out of wedlock, they have a female child named Jane Anto Brooks, who was born in 2013. Thereafter, the respondent has not taken care of the petitioner and her child and hence, they are living separately. The respondent filed the petition for divorce in O.P.No.856 of 2023 before the Family Court, Kanyakumari District at Nagercoil.

3. The learned counsel for the petitioner has submitted that the petitioner has given power of attorney to her father, who is maintaining the petitioner's daughter in Chennai. The respondent, who is a close relative of the petitioner's maternal uncle, has married the petitioner upon talks of both sides family members. The respondent started petroleum outlet in Dubai and he is residing there. As the respondent



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made number of cruelty and torture over the petitioner in Dubai and so, the spouses are living separately. The daughter of the petitioner is studying at Porur in Chennai and the petitioner is also presently living in Chennai. The petitioner finds it very difficult to attend the Court at Nagercoil from Chennai. The respondent is not maintaining them. The petitioner is solely depending on her parents. Therefore, the petitioner has filed this present petition seeking transfer of divorce petition from Nagercoil to Chennai.

4. The learned counsel for the respondent filed a counter and has submitted that the power of attorney obtained by the petitioner's father is not adjudicated before the Sub Registrar Office and hence, it is not valid in the eye of law. The marriage was solemnized on 29.12.2011 at Nagercoil and the marriage was registered in the Registrar Office of Nagercoil. The petitioner and the respondent started marital life only at Nagercoil. The respondent was harassed by the petitioner in Dubai. The petitioner has permanent residence only in Nagercoil, which is stated in this transfer petition. There is no cause of action in Chennai. Because the parents of the petitioner are residing in Chennai, the divorce proceeding cannot be transferred from Nagercoil to Chennai. There are



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no valid grounds in this transfer petition and hence, this petition may be dismissed. In support of his contention, the learned counsel for the respondent relied on the following citation reported in **AIR 2008 Supreme Court 2987 (Jitendra Singh /v/ Bhanu Kumari & Ors.)** and the order passed by the **High Court of Kerala at Ernakulam in Tr.P.(C) No.504 of 2021, dated 03.01.2022.**

5. On hearing both sides and on perusal of records, it is clear that the petitioner and the respondent are spouses and their marriage was solemnized on 29.12.2011 and out of wedlock, they have a female child. As the matrimonial tie between the petitioner and the respondent became strained, they are living separately. The respondent has filed the petition for divorce before the Family Court, Nagercoil. It is seen from the records that both are employed in Dubai. The respondent has not disputed about the petitioner's employment, which is revealed from the additional typed set of records. It is the specific case of the petitioner that her female child is studying Vth std in a school at Porur, Chennai and produced the copy of the selection card issued by Alpha School of Porur, Chennai and that the child is maintained by her father. The father's residence is at Porur as revealed from his family card and



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aadhaar card copy. The petitioner's aadhaar card also shows the present address of the petitioner. The petitioner produced a copy of power of attorney executed by her mentioning her employment address in Dubai and the residence address in Chennai. These are all not objected by the respondent.

6. In view of the settled proposition of law of the Hon'ble Supreme Court that the convenience of the wife should be predominantly looked into, while deciding the question of transfer of matrimonial petitions and also in view of the submissions by both parties, it is clear that the petitioner and her child are residing at her parental home in Chennai and at present, the case is looked into by her father, who is aged more 65 years. In the citations relied on by the respondent, one relates to the original suit and the another one relates to matrimonial case, but in that case, the temporary address was given by a spouse. Whereas, in this case at hand, the petitioner and her child are residing in Chennai along with the petitioner's father, which is not disputed. Moreover, the child is studying in School in Porur and the petitioner authorised her father to proceed with the divorce petition filed by the respondent, which is also pending at service of notice stage. Hence, the authorities are not



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applicable to the facts of this case. It is also to be noted that the respondent is also working and residing in Dubai and so, he also needs to come India to attend on material hearing of the case, it will not be difficult for him to attend Chennai, while departing Dubai. In such circumstances, the petitioner's request is considered in her favour as per the settled proposition of law and thus, this Court is inclined to allow this petition.

7. In the result, this Transfer Civil Miscellaneous Petition is allowed. The petition in O.P.No.856 of 2023 pending on the file of the Family Court, Kanyakumari District at Nagercoil stands transferred to the file of the Principal Family Court, Chennai, for disposal according to law. No costs. Consequently, the connected Miscellaneous Petition is closed.

18.11.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Family Court,
Kanyakumari District at Nagercoil.
- 2.The Principal Family Court,
Chennai.
- 3.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

Pre - Delivery Order made in
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