



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF MAY, 2024

BEFORE

THE HON'BLE MR JUSTICE H.T. NARENDRA PRASAD

CIVIL PETITION NO. 87 OF 2022

BETWEEN:

SMT.PADMA ARADHYA
AGED ABOUT 43 YEARS
W/O H S RAKESH ARADHYA
D/O HANUMANTH ACHAR V.JOSHI
R/AT NO.36, 2ND FLOOR
GREEN GARDEN LAYOUT
MANIPAL COUNTRY ROAD
SINGASANDRA, HOSUR ROAD
BENGALURU 560068.

...PETITIONER

(BY SRI. RAJ PRABHU S.,ADVOCATE)

AND:

SRI.H.S.RAKESH ARADHYA
AGED ABOUT 46 YEARS
S/O H S SIDDHARAM ARADHYA
R/O LAXMI VENKATESHWARA NILAYA
6TH CORSS, SLV LAYOUT
GADIKOPPA, SAGAR ROAD
SHIVAMOGGA 577202.

...RESPONDENT

(BY SRI. MOHAN P.S.,ADVOCATE)

THIS CIVIL PETITION IS FILED UNDER SECTION 24 OF
CPC, PRAYING TO I) WITHDRAW THE CASE M.C.NO. 211/2020
PENDING ON THE FILE OF THE FAMILY COURT, SHIVAMOGGA
AND TRASNFER THE SAME TO BE THE HONBLE I ADDL. FAMILY

Digitally signed
by
HEMALATHA A
Location: High
Court of
Karnataka



COURT AT BENGALURU FOR ADJUDICATION II) PASS SUCH OTHER ORDERS AND GRANT SUCH OTHER RELIEFS AS THIS HONBLE COURT DEEMS FIT UNDER THE FACTS AND CIRCUMSTANCES OF THE CASE, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. This petition under Section 24 of CPC is filed by the petitioner-wife seeking for transfer of M.C.No.211/2020 pending on the file of Principal Judge, Family Court, Shivamogga to the I Addl. Family Court, Bengaluru.

2. The petitioner is the legally wedded wife of the respondent and their marriage was solemnized on 18.05.1998 at Veerabhadreshwara Temple, Haveri District as per Hindu rites and customs. After the marriage, the petitioner was residing with her husband at her matrimonial house. Out of the wedlock, a male child was born on 03.10.2004. As matrimonial disputes arose between the parties in the year 2016-17, the petitioner started living separately with her son at Bengaluru.



Thereafter, the respondent-husband filed a divorce petition under Section 13(1) of the Hindu Marriage Act in M.C.No.211/2020 before the Principal Judge, Family Court, Shivamogga. The petitioner has filed a petition under Section 9 of the Family Court Act in M.C.No.692/2022 before the I Addl. Family Court, Bengaluru for restitution of conjugal rights, which is pending consideration. The case of the petitioner is that since the petitioner is residing at Bengaluru along with her son, it would cause inconvenience and great hardship for her to travel a distance of 340 kms to Shivamogga to prosecute the case. Hence, she filed the present petition seeking for transfer of case.

3. The learned counsel for the petitioner-wife contended that after the marriage, the petitioner was residing at her matrimonial house. Thereafter, due to matrimonial disputes, the petitioner started living separately with her son at Bengaluru. He contended that the respondent is a resident of Bengaluru and his parents are presently



residing at Bengaluru and he is working at a private company at Shivamogga and only to harass the petitioner, he has filed a divorce petition at the Family Court, Shivamogga. He further contended that the petitioner has filed a petition before the Family Court, Bengaluru for restitution of conjugal rights, which is pending consideration. She has no other relatives or family members to assist her in traveling to Shivamogga, which is at a distance of 340 kms to prosecute the case. Therefore, if the petition is not transferred, it would cause great inconvenience and hardship to the petitioner-wife. Hence, the learned counsel sought for allowing the petition.

4. The learned counsel for the respondent-husband contended that the respondent is working at a private company in Shivamogga and he cannot avail leaves often to attend the case and therefore, it would be difficult for him to travel to Bengaluru to prosecute the case. Hence, the learned counsel sought for dismissal of the petition.



5. Heard the learned counsel for the parties. Perused the petition papers.

6. It is not in dispute that the petitioner is the legally wedded wife of the respondent and their marriage was solemnized on 18.05.1998 at Veerabhadreshwara Temple, Haveri District as per Hindu rites and customs. After the marriage, the petitioner was residing with her husband at her matrimonial house. Out of the wedlock, a male child was born on 03.10.2004. As matrimonial disputes arose between the parties in the year 2016-17, the petitioner started living separately with her son at Bengaluru. Thereafter, the respondent-husband filed a divorce petition under Section 13(1) of the Hindu Marriage Act in M.C.No.211/2020 before the Principal Judge, Family Court, Shivamogga. The petitioner has filed a petition under Section 9 of the Family Court Act in M.C.No.692/2022 before the I Addl. Family Court, Bengaluru for restitution of conjugal rights. The case of the petitioner is that since the petitioner is residing at Bengaluru along with her son,



it would cause inconvenience and great hardship for her to travel a distance of 340 kms to Shivamogga to prosecute the case. Moreover, the respondent's parents are residing at Bengaluru and he keeps traveling to Bengaluru to visit them.

7. This Court in the case **Smt.M.V.Rekha v. Sri Sathya @ Suraj - ILR 2010 KAR 5407** at Paragraph No.15 has held as hereunder:

"The cardinal principle for exercise of power under Section 24 of the Code of Civil Procedure is that ends of justice demand the transfer of the suit, appeal or other proceeding. In matrimonial matters, wherever Courts are called upon to consider the plea of transfer, the Courts have to take into consideration the economic soundness of either of the parties, the social strata of the spouses and behavioural pattern, their standard of life antecedent to marriage and subsequent thereon and the circumstances of either of the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to



life. Generally, it is the wife's convenience which must be looked at while considering transfer. Further, when two proceedings in different Courts which raise common question of fact and law and when the decisions are interdependent, it is desirable that they should be tried together by the same Judge so as to avoid multiplicity in trial of the same issues and conflict of decisions (See Smt.NandaKishori v. S.B.Shiva Prakash AIR 1993 Kar 87, Sumita Singh v. Kumar Sanjay and Anr. MANU/SC/0936/2001:AIR 2002 SC 396 and Smt.Swarna Gouri v. Sri Vinayak Pujar MANU/KA/7130/2007 : ILR 2007 Kar 4561."

(emphasis supplied)

8. Therefore, taking note of the inconvenience as made out by the petitioner and the law laid down in the case of Smt.M.V.Rekha (supra), which provides that convenience of the wife is an aspect that is to be taken note of while considering the transfer petitions, petition deserves to be allowed. Accordingly, the following order is passed:



ORDER

- a) The petition is **allowed**.
- b) The case in M.C.No.211/2020 pending on the file of Principal Judge, Family Court, Shivamogga is hereby withdrawn and transferred to the I Addl. Family Court, Bengaluru.
- c) The transferor Court is hereby directed to transmit the entire records to the transferee court.
- d) The transferee court after hearing the parties is directed to dispose of the said case as expeditiously as possible and in accordance with law.

Sd/-
JUDGE

DM
List No.: 1 Sl No.: 6