



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2015

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

Tr.C.M.P. Nos.56 and 57 of 2015
and
M.P.Nos.1 and 1 of 2015

G.Senthil Kumar ... Petitioner in both Tr.C.M.Ps

Vs.

S.Abirami ... Respondent in Tr.C.M.P.No.56/15

Minor S.Srutheksha ... Respondent in Tr.C.M.P.No.57/15

Prayer in Tr.C.M.P.No.56/2015:- Petition has been filed under Section 24 of C.P.C., praying, to withdraw the petition in H.M.O.P.No.62 of 2010 from the file of the Sub Court, Sankari and to transfer the same to the file of Family Court, Salem.

Prayer in Tr.C.M.P.No.57/2015:- Petition has been filed under Section 24 of C.P.C., praying, to withdraw the suit in O.S.No.140 of 2012 from the file of the II Additional District Court, Salem and to transfer the same to the file of Family Court, Salem.

For Petitioner
in both Tr.C.M.Ps : Mr.V.Sekar

For Respondent
in both Tr.C.M.Ps : Mr.N.Manokaran

COMMON ORDER

The petitioner in H.M.O.P.No.62 of 2010 pending on the file of the Sub Court, Sankari has come forward with these petitions to transfer the same to the Family Court, Salem for disposal along with O.S.No.140 of 2012 which is pending before the II Additional District Court, Salem.

2.Heard the learned counsel for the petitioner and the learned counsel for the respondent.



3.Learned counsel for the petitioner submitted that the petitioner filed H.M.O.P.No.62 of 2010 for divorce on the ground of cruelty and desertion on the file of the Sub Court, Sankari. The respondent/wife has contested the same. He further submitted that the respondent/wife filed O.S.No.140 of 2012 before the II Additional District Court, Salem, on behalf of the minor daughter for partition and separate possession of half share in the suit property and hence, to avoid multiplicity of proceeding and conflicting of judgments, he want both the cases to be tried jointly on the file of the Family Court, Salem for disposal in accordance with law.

4.Resisting the same, the learned counsel for the respondent/wife in Tr.C.M.P.No.56/2015 would submit that the petitioner/husband has already filed Tr.O.P.No.200 of 2013 on the file of the Principal District Court, Salem to transfer H.M.O.P.No.62 of 2010 and also O.S.No.140/2012 pending on the file of the II Additional District Court, Salem to the Family Court, Salem which was dismissed on 17.07.2014 and against which, he has not preferred any appeal. The second limb of argument is that the petitioner/wife is residing at Bhavani in Erode District which is 17 kms away from Sankari and hence, it is convenient for her to attend the Court at Sankari. It is further submitted that as per the Amended Section 19(iii)(a) of the Hindu Marriage Act, "In case the wife is the petitioner, where she is residing on the date of presentation of petition". But in this case, the petitioner/husband has filed the transfer petitions and so, there is no necessity for transfer. He further submitted that the suit in O.S.No.140 of 2012 is mere a suit for partition filed by the minor child and so, it is entirely different from the divorce on the ground of cruelty and desertion. Therefore, there is no necessity for joint trial. Hence, he prayed for dismissal of the transfer petitions. He also relied upon the decision reported in 2006 (4) MLJ 694 (Dr.M.S.Gayathri vs. Dr.S.Natarajan).

5.Considered the rival submissions made by both sides and perused the typed set of papers.

6.The petitioner filed H.M.O.P.No.62 of 2010 for divorce on the ground of cruelty and desertion. But on behalf of the minor child, the respondent/wife in Tr.C.M.p.No.56/20105 has filed a suit in O.S.No.140 of 2012 for partition and separate possession against her father. In such circumstances, I am of the view that the suit is entirely different from H.M.O.P.No.62 of 2010 and so, there is no necessity for joint trial. Further, as a daughter and as a co-parcener of the



ancestral property, the minor daughter filed the suit for partition and separate possession of half share in the suit property and so, the suit in O.S.No.140 of 2012 has nothing to do with the petition for divorce in H.M.O.P.No.62 of 2010. The second limb of argument of the learned counsel for the respondent is that the respondent/wife is residing at Bhavani, Erode District which is 17 kms away from Sankari Taluk and it is convenient for her to attend the Court for hearing. Therefore, I do not find any reason for transfer H.M.O.P.No.62 of 2015. Further, it is admitted by both sides that the petitioner/husband has filed Tr.O.P.No.200 of 2013 which was dismissed on 17.07.2014. But the same was not challenged and the petitioner filed these transfer petitions as if these are the fresh applications. Hence, I do not find any reason to transfer both the cases, viz., H.M.O.P.NO.62 of 2010 and O.S.No.140 of 2012. Accordingly, the Civil Revision Petition deserves to be dismissed as devoid of merits.

7.In the result, the Transfer Civil Miscellaneous Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

cse

To

1.The Sub Court,
Sankari.

2.The II Additional District Court,
Salem.

+2cc's to Mr.N.Manokaran, Advocate, S.R.No.66276
+2cc's to Mr.R.Nandhakumar, Advocate, S.R.No.66236

Tr.C.M.P. Nos.56 and 57 of 2015
and M.P.Nos.1 and 1 of 2015

AD(CO)
CA(07/01/2016)