

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2015

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

Tr.C.M.P. No.868 of 2015

and M.P.No.1 of 2015

1.Sridhar
2.Pachaiyammal

... Petitioners/Defendants

Vs.

1.Archana
2.Minor Mithun Vaseegaran
(Represented by next friend/mother/
1st respondent)

... Respondents/Plaintiffs

Prayer:- Petition has been filed under Section 24 of C.P.C., praying to withdraw and transfer the suit in O.S.No.74 of 2013 from the file of the Additional District Court, Dharmapuri, to the file of III Additional Family Court, Chennai, wherein the first petitioner's Guardian petition in G.W.O.P.No.690 of 2015 is pending.

For Petitioner : Mr.S.Vijay Anand

For Respondents : Mr.S.Vediappan

O R D E R

The petitioners, who are the defendants in O.S.No.74 of 2013, has filed this petition to transfer O.S.No.74 of 2013 pending on the file of the Additional District Court, Dharmapuri, to the file of the Family Court, Chennai, for disposal.

2. Learned counsel for the petitioners submits that the marriage between the first petitioner and first respondent was performed in the year 2007. The first respondent/wife gave birth to a male child in the year 2009, but after that, she did not resume in her matrimonial home. So the first petitioner/husband was forced to file a petition in H.M.O.P.No.17 of 2011 on the file of the Sub-Court, Dharmapuri for restitution of conjugal rights, wherein the wife/first respondent herein has given an undertaking to resume in matrimonial home. Accordingly, decree has been passed. Even thereafter, the first respondent/wife did not resume in her matrimonial home. So the petitioner/husband was forced to file a petition in H.M.O.P.No.51 of 2012 on the file of the Sub-Court, Dharmapuri for divorce on the ground of cruelty and desertion, which was later withdrawn. At that

time, first respondent/wife has filed H.M.O.P.No.1442 of 2012 for restitution of conjugal rights and M.C.No.375 of 2012 for maintenance under Section 125 Cr.P.C. before the file of III Additional Principal Judge, Family Court, Chennai. As soon as wife filed the said application, the first petitioner/husband filed Tr.C.M.P.No.126 of 2015 before this Court and the same was dismissed. The first petitioner/husband has also filed G.W.O.P.No.690 of 2015, which is pending on the file of the III Additional Family Court, Chennai. Therefore, he prayed for transfer the suit in O.S.No.74 of 2013 from the file of the Additional District Court, Dharmapuri to the file of the III Additional Family Court, Chennai, wherein G.W.O.P.No.690 of 2015 is pending.

3. Resisting the same, learned counsel for the respondents submits that in O.S.No.74 of 2013, proof affidavit has already been filed and plaintiffs' side cross-examination was done in part, at this stage, if the case will be transferred to III Additional Family Court, Chennai, it will not see the light of the day. He further submits that the petitioners filed this petition only with a view to drag on the proceedings. Hence, he prayed for dismissal of the petition.

4. Considered the rival submissions made on both sides and perused the materials available on record.

5. Admittedly, the respondents herein have filed a suit in O.S.No.74 of 2013 directing the first petitioner to pay past and future maintenance and also create a charge over the undivided half share of the first petitioner over the suit property and other consequential reliefs. The suit properties are situated within the jurisdiction of the District court, Dharmapuri. But the wife, who is a Doctor, is doing her practice in Padappai, which is within the jurisdiction of the Family Court, Chennai and to prove the same, first respondent/husband has filed a photo.

6. Considering the aforesaid circumstances of the case, the suit properties mentioned in O.S.No.74 of 2013 are situated within the territorial jurisdiction of the District Court, Dharmapuri. It is to be noted that in Subordinate Courts, presence of parties are not necessary for each and every hearing. Furthermore, plaintiffs' side cross-examination has been partly done and the petitioners herein are ready to attend the Court at Dharmapuri and get along with the same. Under such circumstances, I do not find any reason for transfer O.S.No.74 of 2013 from the file of the Additional District Court, Dharmapuri to the file of the III Additional Family Court, Chennai, merely because G.W.O.P.No.690 of 2015 is pending on its file. As both the parties are ready to get along with the trial at Dharmapuri, the Presiding Officer, Additional District Court, Dharmapuri, is directed

to transmit all the records pertaining to O.S.No.74 of 2013 to the file of the Family Court, Dharmapuri. The Presiding Officer, Family Court, Dharmapuri, is directed to dispose of O.S.No.74 of 2013 within a period of two months from the date of receipt of a copy of this order, on day to day basis, after giving fair opportunity to both sides.

7. With the above direction, this Transfer Civil Miscellaneous Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Kj

Sd/-

Assistant Registrar

/True Copy/

Sub-Assistant Registrar

To

1. The Presiding Officer,
The Family Court, Dharmapuri.
2. The Additional District Judge,
Dharmapuri.

+1 C.C. To MR.S.Vijay Anand, Advocate in SR.NO.66143

+1 C.C. To MR.S.Vediappan, Advocate in SR.NO.66003

सत्यमेव जयते

Tr.C.M.P. No.868 of 2015
and M.P.No.1 of 2015

TM(CO)

sd : 22/12/2015

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