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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

Tr.C.M.P.No.19 of 2015

&

M.P.No.1 of 2015

Meera Devi

... Petitioner

Vs.

Tamilselvan

... Respondent

Transfer Civil Miscellaneous Petition filed under Section 24 of Civil Procedure Code praying to withdraw and transfer the case in H.M.O.P No.8 of 2012 on the file of the District Court, Karaikal, Puducherry Union Territory to the Principal Sub-Court, Mayiladuthurai, Nagappatinam District in H.M.O.P No.44 of 2012 for joint trial.

For Petitioner : Mr.D.Veerasekaran

For Respondent : Mr.S.Sounthar

O R D E R

This petition has been filed under Section 24 of the Code of Civil Procedure for the transfer of H.M.O.P.No.8 of 2012 allegedly pending on the file of the District Court, Karaikal, Union Territory of Puducherry to the file of Principal Subordinate Court, Mayiladuthurai, Nagappatinam District for joint trial with H.M.O.P.No.44 of 2012 on the file of the said Court.

2. The wife is the petitioner in H.M.O.P.No.44 of 2012 on the file of the Principal Subordinate Judge, Mayiladuthurai, whereas husband is the petitioner in H.M.O.P.No.8 of 2012 on the file of the District Court, Karaikal, Union Territory of Puducherry. The husband's petition was filed for divorce and the wife's petition was filed for restitution of conjugal rights. The wife, having allowed the divorce O.P filed by the husband to be decreed ex parte, has come forward with the



present petition for transfer of the said H.M.O.P for divorce after filing a petition to set aside the ex parte decree along with a petition to condone the delay in filing such a petition.

3. It is an admitted fact that the petition under Section 5 of the Limitation Act to condone the delay in filing the petition to set aside the ex parte decree of divorce was allowed and it was confirmed in a civil revision petition by this Court. Without waiting for the result of the application filed for setting aside the ex parte decree, the wife has come forward with the present Transfer Miscellaneous Petition.

4. Mr.S.Sounthar, learned counsel for the respondent (husband) contends that the prayer is not for transfer of the petition to set aside the ex parte decree and on the other hand, the prayer has been couched in such a way that the H.M.O.P, which had already ended in an ex parte decree for divorce, should be transferred to the Court of Principal Subordinate Judge for joint trial with H.M.O.P.No.44 of 2012. According to him, there cannot be any joint trial of a H.M.O.P, which has already been disposed of, until it is restored by setting aside the ex parte decree, with a pending H.M.O.P filed by the wife.

5. Learned counsel for the respondent submits that the H.M.O.P filed by the petitioner/wife for restitution of conjugal rights, namely H.M.O.P.No.44 of 2012 on the file of the Court of Principal Subordinate Judge, Mayiladuthurai is in the final stage and arguments alone are to be heard before pronouncement of judgment, whereas the case which is to be transferred is yet to be restored and such restoration depends upon the outcome of the application to set aside the ex parte decree of divorce granted in favour of the husband. According to the submissions made by the learned counsel for the respondent, the present petition is nothing but an attempt to prolong the case filed by the wife for restitution of conjugal rights and postponing the pronouncement of a verdict in her own case indefinitely or as long as possible. The status report called for from the Judge of the Family Court (District Court) (FAC), Karaikal shows that the learned counsel for the respondent is correct in his submissions.

6. In view of the same, this Court comes to the conclusion that there is lack of bonafide on the part of the petitioner in filing the present Transfer Civil Miscellaneous Petition and it is only for the purpose of prolonging the case filed by her for restitution of conjugal rights and preventing a verdict being given in her own petition. Hence, the Transfer Civil Miscellaneous Petition is liable to be dismissed.



Accordingly, the Transfer Civil Miscellaneous Petition is dismissed. However, in order to dis-spell the apprehension, the petitioner may have to the effect that the ex parte decree for divorce may be projected as an impediment for her getting an order in her H.M.O.P for restitution of conjugal rights, it is made clear that the Principal Subordinate Judge, Myladuthurai shall decide H.M.O.P.No.44 of 2012 on its own merits, since the decree of divorce has not attained finality because of the pendency of the application for setting aside the ex parte decree. No costs. Consequently, the connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

gpa

To

1.The District Judge,
Karaikal, Puducherry Union Territory

2.Principal Sub Judge,
Mayiladuthurai, Nagapattinam

+1 cc to Mr.S.Sounthar Advocate sr.7677

+1 cc to Mr.D.Veerasekaran Advocate sr.6974

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