

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

Tr.C.M.P.No.379 of 2015
and M.P.No.1 of 2015

S.Jeyalakshmi

... Petitioner

Vs.

M.Mohan

... Respondent

Prayer:- Petition has been filed under Section 24 of C.P.C., praying to order withdrawing the petition in H.M.O.P.No.49 of 2015 on the file of Principal Subordinate Court, Tiruppur and transfer the same to the file of the Sub Judge, Court at Tambaram to have a joint trial with H.M.O.P.No.244 of 2015 therein.

For Petitioner : Mr.P.P.Shanmugasundaram

For Respondent : Mr.MA.P.Thangavel

O R D E R

The respondent in H.M.O.P.No.224 of 2015, has come forward with this petition seeking withdrawal of H.M.O.P.No.49 of 2015 on the file of Principal Sub-Court, Tiruppur and transfer the same to the file of Subordinate court, Tambaram to have a joint trial with H.M.O.P.No.244 of 2015, stating that the marriage between the petitioner and respondent was performed in Chennai and both were residing in Chennai and now, only the husband is residing in Tiruppur and he filed application in H.M.O.P.NO.49 of 2015 before the Principal Subordinate Court, Tiruppur for divorce and the Principal Subordinate Court, Tiruppur has no jurisdiction to try the said case.

2. The petitioner herein/wife filed H.M.O.P.No.244 of 2015 before the Subordinate Court, Tambaram for restitution of conjugal rights. It is averred in this Tr.C.M.P., that the petitioner/wife is working as a Health Visitor in Family Health Department of Medical College and Hospital, Chengalpattu and she is finding it difficult to travel 436 Kms to attend the hearing before Sub-Court at Tiruppur.

3. Resisting the averments made in this Tr.C.M.P., respondent/husband filed detailed counter stating that the

respondent/husband is residing in Tiruppur and that his minor daughter is studying in III Std., and she is in his care and it will be impossible to leave his minor daughter alone and travel to Tambaram. He further stated that he has not received any notice in H.M.O.P.No.244 of 2015 pending on the file of Sub-Court, Tambaram. The learned counsel for respondent/husband contended that the court shall not transfer the pending H.M.O.P., for divorce from Principal Sub-Court, Tiruppur to Sub-Court, Tambaram on the basis of the petition filed by the wife. The learned counsel relied on the observation made by Apex Court in the case of Pooja Choudhary Vs. Vinay Jaiswal in Transfer Petition (Civil)No.683 of 2014 dated 08.01.2015 that the husbands also have a right and why the husbands should be always made to suffer and thus prayed for dismissal of the present Tr.C.M.P.

4. I have considered the rival submissions made on either side and perused the typed set of papers.

5. It appears that the marriage between the petitioner and respondent was solemnized on 12.12.2013 and both of them were residing at Chennai and the respondent/husband without information went to Tiruppur and filed H.M.O.P.No.49 of 2015 on the file of Principal Sub-Court, Tiruppur for divorce on the ground of cruelty. Admittedly, the marriage has been performed at Chennai and both were very well residing at Chennai, but husband alone has been now residing at Tiruppur and filed application for divorce. As per the Hindu Marriage Act, Principal Sub-Court, Tiruppur has no jurisdiction to entertain the H.M.O.P., case. As per Section 19 of the Hindu Marriage Act, privilege has been given to wives to file application where they are residing and in the present case, both of them were admittedly residing at Chennai after marriage, however, the husband filed H.M.O.P.No.49/2015 before the Principal Sub-court, Tiruppur, which court has no territorial jurisdiction. It is pertinent to note that wife has filed application for restitution of conjugal rights and the same is pending before Sub-Court, Tambaram.

6. Learned counsel for the respondent/husband would submit that notice has not been received by the husband in H.M.O.P.No.224 of 2014, filed by the wife. But the learned counsel for the petitioner/wife represented that private notice has been received by the husband.

7. Considering the facts and circumstances of the case and the nature of work done by the petitioner/wife and that Principal Sub-Court, Tiruppur has no jurisdiction to entertain the H.M.O.P., case and that the husband ought to have filed H.M.O.P., within the jurisdiction of Chennai, this court is of the view that it is a fit case for withdrawal of H.M.O.P.No.49 of 2015, from the file of Principal Sub-Court, Tiruppur.

8. The submission of the learned counsel for the respondent/husband is that husband has adopted a child and that minor girl is studying 3rd std., and his presence is very much essential. However, as per the decision reported in 2000 (2) T.L.N.J.158 (Sudha v. Vaidyanathan), the parent who is having custody of the child below 5 years, is entitled for transfer of pending H.M.O.P., but here, the child is 8 years old. In such circumstances, the argument put forth on the side of the learned counsel for the respondent/husband does not merit acceptance. Further, it is submitted by the learned counsel for the respondent/husband that the respondent is working in Tiruppur Banian Company. However, herein, the wife is a Government Servant and she is working in Chengalpattu. Hence, to suit the convenience of wife, H.M.O.P.No.49 of 2015 pending on the file of Principal Sub-Court, Tiruppur, is ordered to be withdrawn from the file of the Principal Sub Court, Tiruppur and transferred to the file of Sub-Court, Tambaram for disposal in accordance with law. The Principal Subordinate Judge, Tiruppur, is directed to transmit the records pertaining to H.M.O.P.No.49 of 2015 to the file of the Sub-Court, Tambaram, within a period of two weeks from the date of receipt of a copy of this order. The Sub Judge, Tambaram is directed to dispose of the H.M.O.P.s., within 6 months thereafter.

9. Accordingly, this Transfer Civil Miscellaneous Petition is ordered. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy// सत्यमेव जयते

Sub Assistant Registrar

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To

1.The Principal Subordinate Court, Tiruppur

2. The Sub Judge, Tambaram

+1 cc to Mr.P.P.Shanmugasundaram, Advocate, sr.467

+1 cc to Mr.Ma.P.Thangavel, Advocate, sr.348

Tr.C.M.P. No.379 of 2015

nm co

kra 02.02.2016