

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

Transfer CMP No.671 of 2015 and

MP.No.1 of 2015

D.Kowsalya ...Petitioner

versus

R.Ashok Kumar ...Respondent

PRAYER: Tr.C.M.P. filed under section 24 of C.P.C., to withdraw O.P.No.1927 of 2015 pending before the learned Principal Judge Family Court at Chennai and transfer the same and heard along with HMOP No.243 of 2015 pending before the learned Principal Family Court Judge at Coimbatore.

For Petitioner : Mr.G.Arivarasan

For Respondent : Ms.R.Sumithra Chakravarthi

O R D E R

The respondent in O.P.No.1927 of 2015 on the file of the learned Principal Judge, Family Court at Chennai is the petitioner in this transfer petition.

2. The respondent initiated proceedings in O.P.No.1927 of 2015 before the Principal Judge, Family Court, Chennai, praying for a decree of divorce. The petitioner on the other hand filed HMOP No.243 of 2015 before the Principal Family Court, Coimbatore, praying for a decree under Section 9 of the Hindu Marriage Act. Both the proceedings are now pending before the respective courts.

3. The petitioner is stated to be a permanent resident of Coimbatore. According to the petitioner, it would not be possible for her to appear before the Family Court at Chennai on all the dates of hearing. The petitioner therefore filed the petition for transfer.

4. Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the respondent.

5. The petitioner is a resident of Coimbatore. The respondent is stated to be a resident of Udhagamandalam in the district of Nilgiris. The proceedings in O.P.No.1927 of 2015 was instituted by him at Chennai, as he was employed at Chennai.

6. Section 19(iii-a) of the Hindu Marriage Act, permits the wife to initiate matrimonial proceedings before the Court in whose jurisdiction she is residing at the time of institution of proceedings.

7. The petitioner is residing at Coimbatore along with her minor child. The petitioner is therefore correct in her contention that it would not be possible for her to appear before the Court at Chennai. Even otherwise, no prejudice would be caused to the respondent by transferring the proceedings to the Court at Coimbatore, in view of the fact that he is also a resident of Udhagamandalam, which is near to Coimbatore.

8. There are two proceedings now pending before two different Courts. In case, two proceedings involving a common question are allowed to be prosecuted in two different courts, there is a possibility of passing contradictory orders in the very same subject matter. I am therefore of the view that the petitioner has made out a case for transfer.

9. The proceedings in O.P.No.1927 of 2015 is withdrawn from the file of Principal Judge, Family Court, Chennai and is transferred to the file of Principal Judge, Family Court, Coimbatore for disposal along with HMOP No.243 of 2015.

10. The Transfer Civil Miscellaneous Petition is allowed as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/

Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1.The Principal Judge, Family Court, Chennai
2.The Principal Judge, Family Court, Coimbatore
+1cc to Mr.G.Arivason, Advocate SR.No.57482

Transfer CMP No.671 of 2015

SDR 12.11.2016