

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2016

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

Tr.C.M.P.No.773 of 2015
and
M.P.No.1 of 2015

I.Vimala Devi

.. Petitioner

Vs.

M.Ramesh

.. Respondent

Prayer:- Petition is filed under Section 24 of C.P.C., to withdraw the petition in H.M.O.P.No.33 of 2012 from the file of the Principal Subordinate Court, Chengalpattu and to transfer the same to the Family Court, Salem.

For Petitioner : Mr.S.Ramasundaram

For Respondent : Mr.N.Manokaran

ORDER

The petitioner/wife who is the respondent in H.M.O.P.No.33 of 2012 on the file of the Principal Subordinate Court, Chengalpattu has come forward with this petition to transfer the same to the Family Court, Salem.

2.Learned counsel for the petitioner/wife submitted that the respondent filed H.M.O.P.No.33 of 2012 before the Principal Subordinate Court, Chengalpattu where she entered appearance and subsequently she was set exparte and an exparte order has been passed. He would also submit that the petitioner/wife filed an application in I.A.No.78 of 2015 to set aside the exparte order and that has been allowed. He further submitted that the petitioner/wife is residing at Salem along with her five years old daughter and so, it is difficult for her to attend each and every hearing before the Principal Subordinate Court, Chengalpattu. Hence, she prayed for transfer the case in H.M.O.P.No.33 of 2012 from the file of the Principal Subordinate Court, Chengalpattu to the file of the Family Court, Salem.

3. Resisting the same, the learned counsel for the respondent/husband submitted that the respondent filed a petition for divorce on the ground of cruelty and desertion. The petitioner/wife entered appearance and subsequently she was set exparte and an exparte order has been passed on 29.04.2013. He would also submitted that since the petitioner/wife has not filed any application to set aside the exparte order within the time stipulated by law, he got married on 02.02.2015 and living with his wife. After two years, the petitioner filed an application in I.A.No.78 of 2015 to set aside the exparte order passed on 29.04.2013 and the same was allowed on 15.07.2015 even without notice to the respondent/husband. He would further submitted that this petition has been filed by the petitioner/wife only with a view to drag on the proceedings and she has not mentioned about the same in the present petition. He further submitted that the petitioner/wife has also given a complaint before the All Women Police Station on 28.04.2015 and even before the Police Station, she has not disclosed about the application in I.A.No.78 of 2015. Hence, he prayed for dismissal of the transfer petition.

4. Considered the rival submissions made on both sides and perused the typed set of papers.

5. The respondent/husband filed a petition in H.M.O.P.No.33 of 2012 before the Principal Subordinate Court, Chengalpattu for divorce on the ground of cruelty and desertion. Admittedly an exparte order has been passed on 29.04.2013. It is also an admitted fact that the petitioner/wife filed an application in I.A.No.78 of 2015 to set aside the exparte order which was allowed on 15.07.2015. According to the learned counsel for the respondent/husband, no notice has been served in I.A.No.78 of 2015 and notice has been sent to the wrong address where previously both of them lived together and now only he came to know about the allowing of I.A.No.78 of 2015. It is further submitted that since the petitioner/wife has not filed any application to set aside the exparte order within the time stipulated by the Court, he got second marriage and his marriage is valid. Admittedly, H.M.O.P.No.33 of 2012 is pending before the Principal Subordinate Court, Chengalpattu and whether the marriage of the respondent with his second wife is valid or not cannot be gone into before this Court.

6. The only point to be decided is that whether it is fit case for ordering transfer? Admittedly, the petitioner/wife is residing within the jurisdiction of the Family Court, Salem with her five years old daughter and furthermore, as per Section 19 (iii-a) wherein it was stated that privilege has to be given to

the wife to file a petition in the place where she resides. Since the petitioner/wife is residing within the jurisdiction of the Family Court, I am of the view that it is fit case for withdrawing the case in H.M.O.P.No.33 of 2012 from the file of the Principal Subordinate Court, Chengalpattu and transfer the same to the file of the Family Court, Salem. The Presiding Officer, Principal Subordinate Court, Chengalpattu is directed to transmit all the records pertaining to H.M.O.P.No.33 of 2012 to the file of the Family Court, Salem within fifteen days from the date of receipt of a copy of this order.

7.The Transfer Miscellaneous Petition is ordered accordingly. No costs. Consequently, consequently miscellaneous petition is closed.

sd/-
Assistant Registrar (Cs-VI)

/TRUE COPY/

Sub-Assistant Registrar

cse

To

- 1.The Principal Subordinate Court, Chengalpattu.
- 2.The Family Court, Salem.

+1 CC to MR.S.Ramasundaram Advocate. SR.NO.5462
+1 CC to MR.N.Manokaran Advocate. SR.NO. 4857

Tr.C.M.P.No.773 of 2015
and M.P.No.1 of 2015

CO-LRS
JD 11/02/2016

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