

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

Tr.C.M.P.No.813 of 2015

and

M.P.No.1 of 2015

Sandhiya ... Petitioner

vs.

Radhakrishnan @ Prakash ... Respondent

Transfer Civil Miscellaneous Petition filed under Section 24 of the Code of Civil Procedure to withdraw O.P.No.264 of 2015 pending on the file of Family Court, Erode and to transfer the same to the Family Court, Villupuram District.

For Petitioner : Mr.G.Gubendhiran

For Respondent : Mr.A.Gokulakrishnan

ORDER

Heard both sides.

2. The wife is the petitioner in the Transfer Civil Miscellaneous Petition and the husband is the respondent. The respondent/husband filed O.P.No.264/2015 on the file of the Family Court, Erode for divorce. Even in the H.M.O.P. No.264/2015, the respondent herein/husband has provided the address of the revision petitioner (wife) to be door No.269, West Street, Karuveppilaipalayam, Madapattu Post, Uludurpet Taluk, Villupuram, which comes under the jurisdiction of the Family Court, Villupuram.

3. The petitioner in the Transfer Civil Miscellaneous Petition, namely the wife, has filed a petition in HMOP No.87/2015 on the file of Family Court, Villupuram under Section 9 of the Hindu Marriage Act for restitution of conjugal rights. Now the petitioner (wife) has approached this court for the transfer of the divorce petition filed by the husband on the file of the Family Court, Erode to the Family Court, Villupuram to be tried along with her Original Petition for restitution of conjugal rights.

4. After the introduction of clause (iiia) to Section 19 of the Hindu Marriage Act, 1955, the court having jurisdiction over the place of residence of the wife is also made the jurisdictional court to entertain the HMOP irrespective of the fact whether the petition is by the husband or by the wife. So far as a petition filed by the husband is concerned, clause (iii) of Section 19 makes the place of residence of the respondent (wife) as one of the places wherein the petition can be filed. So far as the wife is concerned, apart from the places mentioned in clauses (i) to (iii), the place mentioned in clause (iiia) is also made the place wherein the relief can be sought for. The relief of divorce and restitution of conjugal rights are interdependent and mutually exclusive. The introduction of Section 19(iiia) itself is to confer a benefit on the wife to have the choice of jurisdiction, including her place of residence. Considering all the above said aspects, this court comes to the conclusion, the petitioner's prayer for transfer of O.P.No.264/2015 from the file of Family Court, Erode cannot be rejected and the same has got to be allowed.

Accordingly, the transfer civil miscellaneous petition is allowed. HMOP No.264/2015 pending on the file of Family Court, Erode is withdrawn and transferred to the file of the Family Court, Villupuram to be tried jointly with HMOP No.87/2015 filed by the petitioner herein (wife). However, there shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

asr

To

- 1) The Family Court, Erode
- 2) The Family Court, Villupuram

1 cc to Mr.G. Gubendhiran, Advocate, Sr. 9820
1 cc to Mr.A. Gokulakrishnan, Advocate, Sr. 9761

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