

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

Transfer CMP No.838 of 2015
and
MP.No.1 of 2015

Senthamarai @ Velivizi

... Petitioner

versus

A.Kalidoss Manickam

.... Respondent

PRAYER: Tr.C.M.P. filed under section 24 of C.P.C., to withdraw the case in HMOP NO. 73/2015 on the file the Sub Court, Namakkal and transfer the same to the I Addl. Family Court, Chennai.

For Petitioner : Mr. A.R.Sakthivel

For Respondent : Mr.S.Ratna Sabapathy
for Mr.T.Bhagyalakshmi

O R D E R

The respondent initiated proceedings in HMOP.No.73 of 2015 before the Subordinate Court at Namakkal, praying for a decree of divorce. The petitioner on the other hand filed M.C.No.494 of 2011 before the First Additional Family Court at Chennai, claiming maintenance. Both the proceedings are pending before the respective courts. The petitioner has come up with this petition for withdrawal of the proceedings from the Subordinate Court at Namakkal and transfer the same to the Family Court at Chennai.

2. The respondent filed a counter affidavit, wherein it was indicated that he has to look after his father, aged about 92 years and as as such, it would not be possible for him to appear before the Family Court at Chennai for the purpose of prosecuting the proceedings.

3. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondent.

4. There are two proceedings now pending between the parties. The proceeding in HMOP No.73 of 2015 initiated by the respondent is pending on the file of Subordinate Court at

Namakkal. The proceeding in M.C.No.494 of 2011 initiated by the petitioner is pending on the file of First Additional Family Court at Chennai. In case, two proceedings are allowed to be taken up by two different courts, there is a possibility of passing contradictory orders. I am therefore of the view that the proceeding initiated subsequently requires to be transferred.

5. 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.

6. The proceedings in HMOP No.73 of 2015 is withdrawn from the file of Subordinate Court at Namakkal and is transferred to the file of First Additional Family Court at Chennai for disposal on merits, along with M.C.No.494 of 2011.

7. The learned counsel for the respondent submitted that the respondent should be given liberty to file an application before the I Additional Family Court at Chennai to dispense with his personal appearance. The respondent is given liberty to file an application before the I Additional Family Court, Chennai to dispense with his personal appearance on the normal dates of hearing, subject to the condition that he would appear on all the effective dates of hearing. In case, any such application is filed, the same shall be considered and disposed of by the learned Trial Judge, taking into account the difficulties projected by the respondent.

8. The Transfer CMP is allowed with the above observation. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

ajr
To

Sub Assistant Registrar

1. The Subordinate Judge,
Sub Court, Namakkal.

2. The I Addl. Judge,
Family Court, Chennai.

+1cc to Mr.A.R.Sakthivel, Advocate, S.R.No.58046

+1cc to Mr.T.Bhagyalakshmi, Advocate, S.R.No.57988

Transfer CMP No.838 of 2015

MV(CO)

CA(09/11/2016)