

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

Tr.C.M.P.No.112 of 2016

and

C.M.P.No.2532 of 2016

Deivanai alias Srividya ... Petitioner/1st Respondent

Vs

1. T.Arunachalam ...1st Respondents/Petitioner
2. B.Gajendran ...2nd Respondent/2nd
Respondent

Transfer Civil Miscellaneous Revision Petition filed under Section 24 of the Civil Procedure Code to withdraw the H.M.O.P.No.3199 of 2014 on the file of the III Additional Family Judge at Chennai and to transfer the same to the file of Principal Subordinate Judge at Trichirapalli and to try along with pending H.M.O.P.No.172 of 2012 on the file of Principal Subordinate Judge at Tiruchirapalli.

For Petitioner : M/s.K.V.Subramanian Asso.
For Respondent-1 : Mr.R.Varadaraj
For Respondent-2 : Mr.M.Mohammed Shafi

O R D E R

Both the respondents are represented by counsel. The arguments advanced by M/s.K.V.Subramanian Associates, learned counsel for the petitioner, by Mr. R.Varadaraj, learned counsel for the first respondent and by Mr.M.Mohammed Shafi, learned counsel for the second respondent are heard.

2. The affidavit filed in support of the Transfer Civil Miscellaneous Petition and the documents produced in the form of typed-set of papers on both sides are perused and this Court paid its anxious consideration to the same.

3. The petitioner is the wife of the first respondent. She filed H.M.O.P.No.172 of 2012 on the file of the Subordinate Judge, Trichirapallai, for the dissolution of marriage between herself and the first respondent (for divorce) under Section 13

(i) (i-a) of the Hindu Marriage Act, 1955. However, in the said petition Section 12 (1)(a) of the Hindu Marriage Act also came to be cited as one of the provisions under which the said relief was sought for. Learned senior counsel appearing for the petitioner submits that the said petition was filed under Section 13(1) (i-a) of the Hindu Marriage Act and Section 12 (1) (a) came to be inadvertently included as the other provision under which the relief was sought for. It is the further submission of the learned senior counsel for the petitioner that the said provision was deleted, which will be seen from the fact that the provision has been rounded in the petition.

4. It is also the submission of the learned senior counsel appearing for the petitioner that simply because an inappropriate provision also has been cited in addition to the correct provision of law, the petition will not be construed to be a petition for declaration of the marriage as null and void under the inappropriate provision and that on the other hand, the prayer made in the petition alone shall be the guiding factor to decide under what provision the relief has been sought for. It is also the contention of the learned senior counsel that the fact that a wrong provision has been quoted in the petition will not be the sole ground on which one can be denied the relief, if the Court can treat the petition as one under the appropriate provision of law.

5. Subsequent to the filing of the said petition and after receiving notice in the said petition, namely, H.M.O.P.No.172 of 2012 on the file of Subordinate Judge, Trichirapalli, the first respondent herein filed H.M.O.P.No.3199 of 2014 on the file of the III Additional Judge, Family Court, Chennai for divorce under Section 13(1)(i), 13(1)(i-a) and (i-b) of the Hindu Marriage Act. The petitioner has approached this Court with the present petition for an order transferring H.M.O.P.No.3199 of 2014 filed by the first respondent herein from the file of the III Additional Judge of the Family Court, Chennai to the file of the Principal Subordinate Judge, Trichirapalli for being tried along with her own divorce petition, namely, H.M.O.P.No.172 of 2012.

6. In support of the contention of the petitioner, the learned senior counsel relies on Section 21-A of the Hindu Marriage Act, 1955 and contends that in cases wherein the relief of judicial separation or divorce is claimed by one party either under Section 10 or under Section 13 of the Hindu Marriage Act, and the other party, subsequently files such a petition either for judicial separation under Section 10 or for divorce under Section 13, then the case instituted second in point of time has to be transferred to the Court in which the case instituted first in point of time is pending.

7. Per contra, it is the contention of the learned counsel for the first respondent that the H.M.O.P.No.172 of 2012 filed by the petitioner being one under Section 12 of the Hindu Marriage Act, Section 21-A shall not stand attracted and that hence, the prayer made by the petitioner for the transfer of the H.M.O.P filed by the first respondent in which the H.M.O.P filed by the petitioner is pending is liable to be rejected.

8. So far as the second respondent is concerned, he is disinterested in the outcome of the petition.

9. The above said contention raised by the learned counsel for the first respondent cannot be countenanced for the simple reason that H.M.O.P.No.172 of 2012 came to be filed by the petitioner herein not for a declaration that her marriage with the first respondent is null and void, but for the dissolution of marriage by a decree of divorce under Section 13 of the Hindu Marriage Act. Of course, by over enthusiasm or by inadvertence, Section 12(1)(a) has also been noted as one of the provisions under which the relief was sought for. The inclusion of such a provision in the petition is no doubt redundant. Even the fact that a wrong provision has been cited will not disentitle the petitioner for the relief claimed, if the Court can treat the petition under proper provision and grant the relief.

10. Here, the mistake committed by the petitioner is to include an irrelevant provision in addition to the appropriate provision of law under which the relief was sought for. In support of his contention, learned senior counsel for the first respondent relied on an unreported judgment dated 22.07.2007 of the Kerala High Court in Transfer Appeal No.7 of 2007. Of course, in the said judgment, a Division Bench of the Kerala High Court held that Section 21-A of the Hindu Marriage Act will be attracted only if the cases are filed for judicial separation or dissolution of marriage either under Section 10 or under Section 13 of the Hindu Marriage Act. With due respect to the Hon'ble Division Bench of the Kerala High Court, I am of the view that the ratio decided therein was confined to the applicability of Section 21-A of the Hindu Marriage Act and it has not dealt with the general power of the High Court under Section 24 of C.P.C to transfer any case from one Court subordinate to it to any other Court Subordinate to it. In addition, this Court, on facts, is not in a position to accept the above said contention of the learned counsel for the petitioner that Section 21-A of the Hindu Marriage Act is not attracted to the facts of the case. The said contention of the learned counsel for the first respondent deserves rejection as untenable. The petition filed by the first respondent for divorce is admittedly a petition under Section 13 of the Hindu

Marriage Act. Hence, the case squarely falls within the ambit of Section 21-A of the Hindu Marriage Act. It is not in dispute that the petitioner herein filed the petition for divorce earlier in point of time and the divorce petition filed by the first respondent is later in point of time. Hence, as per the provision contained in Section 21A of the Hindu Marriage Act, the later O.P, namely, H.M.O.P.No.3199 of 2014 is liable to be transferred to the Court in which the earlier H.M.O.P, namely, H.M.O.P.No.172 of 2012 is pending.

11. For all the reasons stated above, this Court comes to the conclusion that the prayer made by the petitioner for the transfer of H.M.O.P.No.3199 of 2014 from the file of the III Additional Judge, Family Court, Chennai to the file of the Principal Subordinate Judge, Trichirapalli to be tried along with H.M.O.P.No.172 of 2012 has got to be allowed.

12. Accordingly, the Transfer Civil Miscellaneous Petition is allowed. H.M.O.P.No.3199 of 2014 is withdrawn from the file of the III Additional Judge, Family Court, Chennai and transferred to the file of the Principal Subordinate Judge, Trichirapalli to be tried along with H.M.O.P.No.172 of 2012. The Learned Principal Subordinate Judge, Trichirapalli shall make an endeavour to expedite the trial of both the cases and dispose of the same without granting avoidable adjournments. The parties shall also co-operate for the earlier disposal of the cases. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

srn

To

1. The III Additional Family Judge, Chennai

2. The Principal Subordinate Judge at Trichirapalli

+1 cc to Mr.K.V.Subramanian Advocate sr.18945/16

+2 cc to Mr.R.Varadaraj Advocate sr.18498/16

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