

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

TR CMP NO.130 OF 2016

AND CMP NO.3139 OF 2016

K.Amutha

... Petitioner

Versus

S.Kannan

... Respondent

PRAYER: Petition filed under Section 24 of the Code of Civil Procedure with a prayer to withdraw the H.M.O.P.No.632 of 2015 on the file of the I Additional Family Court at Chennai and transfer to the Subordinate Court, Thirumangalam at Madurai, to be tried along with O.P.No.153 of 2015.

For Petitioner : Ms.M.Lakshmi
for Mr.K.V.Shanmuganathan
For Respondent : Mr.K.Kathiresan

O R D E R

The respondent initiated a proceedings in O.P.No.632 of 2015, before the I Additional Family Court at Chennai, praying for a decree of divorce.

2. The petitioner, on the other hand, filed a petition in H.M.O.P.No.153 of 2015, before the Sub Court, Thirumangalam, Madurai, invoking Section 9 of the Hindu Marriage Act, 1955.

3. The petitioner has now come up with this petition praying for an order of transfer the proceedings in O.P.No.632 of 2015 to the file of Sub Court, Thirumangalam at Madurai, for disposal along with H.M.O.P.No.153 of 2015.

4. The respondent in his counter affidavit contended that he is working at Chennai and as such, it would be very difficult for him to appear before the Court at Thirumangalam, Madurai. According to the respondent, the petitioner never appeared before the Trial Court and her intention in filing this transfer petition is to cause him considerable delay.

5. I have heard the learned counsel for the petitioner and the learned counsel for the respondent.

6. There are two proceedings now pending before two different Courts. The divorce petition initiated by the respondent is pending before the I Additional Family Court at Chennai. The petition filed by the petitioner for restitution of conjugal rights in H.M.O.P.No.153 of 2015 is pending before the Sub Court, Thirumangalam, Madurai. In case, these two proceedings are allowed to be prosecuted in two different courts, there is a possibility of passing contradictory orders in the very same subject matter.

7. Section 19(iii-a) of the Hindu Marriage Act, 1955, permits the wife to initiate matrimonial proceedings before the Court in whose jurisdiction she is residing at the time of institution of proceedings.

8. The petitioner has produced sufficient materials justifying her request for transfer. I am therefore of the view that the transfer petition deserves to be allowed.

9. The proceedings in O.P.No.632 of 2015 is withdrawn from the file of I Additional Family Court, Chennai, and is transferred to the file of Sub Court, Thirumangalam, Madurai, for disposal along with H.M.O.P.No.153 of 2015.

10. The respondent is given liberty to file appropriate application before the Trial Court, 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 by the learned Trial Judge, taking into account the preoccupation of the respondent at Chennai.

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

सत्यमेव जयते

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

1.The I Additional Family Court
Chennai.

2.The Subordinate Court
Madurai @ Thirumangalam Camp.

+1 cc to M/s.K.Kathiresan,advocate,sr.64789.

mp(co)
krd 26/12

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