

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **23.11.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

Transfer CMP Nos.209 and 324 of 2016 and
CMP.Nos.5989 and 8971 of 2016

K.Balaji

...Petitioner in
Tr.Cmp.No.209/2016 and
Respondent in Tr.Cmp.No.324/2016

versus

Shagana

...Respondent in Tr.Cmp.No.209/2016
and Petitioner in Tr.CmP.No.324/2016

PRAYER: **Tr.C.M.P.No.209/2016** filed under Section 24 of C.P.C., to withdraw FCOP No.513 of 2015 on the file of Family Court at Salem and transfer the same to the Hon'ble I Additional Family Court, Chennai to try along with HMOP No.936 of 2015.

Tr.C.M.P.No.324/2016 filed under Section 24 of C.P.C., to withdraw HMOP No.936 of 2015 on the file of Family Court No.1 Chennai and transfer the same to Family Court, Salem and try along with FCOP No.513 of 2015.

Ms. K.Jaya Karthiga

for Mr.R.Ravichandran : For Petitioner in
Tr.Cmp.No.209/2016 and
For Respondent in
Tr.Cmp.No.324/2016

Mr.R.Nalliyappan

: For Petitioner in
Tr.Cmp.No.324/2016 and
For Respondent in
Tr.Cmp.No.209/2016

COMMON ORDER

The petitioner in Tr.Cmp.No.209 of 2016 initiated proceedings in HMOP No.936 of 2015 before the I Additional Family Court at Chennai to declare the marriage as null and void. The petitioner in Tr.Cmp.No.324 of 2016, thereafter, filed FCOP No.513 of 2015 before the Family Court at Salem, praying for a decree under Section 9 of the Hindu Marriage Act.

2. The petitioner in HMOP No.936 of 2015 is before this Court for transfer of the proceedings from Family Court at Salem to the file of I Additional Family Court at Chennai.

3. The petitioner in FCOP No.513 of 2015 has filed Tr.Cmp.No.324 of 2016 to transfer the matrimonial proceedings in HMOP No.936 of 2015 to the Family Court at Salem.

4. The parties filed counter affidavits in the respective transfer petitions.

5. The respondent in Tr.Cmp.No.209 of 2016 filed counter affidavit indicating that she is presently residing at Salem and not at Chennai, as contended by the petitioner.

6. There are two proceedings now pending before two different Courts. The proceedings initiated by the husband is pending before the I Additional Family Court at Chennai. The connected proceedings initiated by the wife is pending before the Family Court at Salem. In case, these two proceedings involving a common question are allowed to be prosecuted in two different courts, there is every possibility of passing contradictory orders in the very same subject matter. I am therefore of the view that one of such proceedings requires to be transferred.

7. 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.

8. The petitioner in Tr.Cmp.No.324 of 2016 has produced sufficient materials indicating her difficulties to appear before the I Additional Family Court at Chennai to defend the proceedings in HMOP No.936 of 2015.

9. In the result, the proceedings in H.M.O.P.No.936 of 2015 is withdrawn from the file of I Additional Family Court, Chennai and is transferred to the file of Family Court, Salem, for disposal along with FCOP No.513 of 2015.

10. The petitioner in Tr.Cmp.No.209 of 2016 is permitted 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 and would co-operate for an early disposal of the matrimonial proceedings. In case, any such application is filed, the same shall be considered by the learned Trial Judge taking into account the residence of the petitioner at Chennai.

11. The Transfer Civil Miscellaneous Petitions are allowed with the above observation. No costs. Consequently, connected miscellaneous petitions are closed.

23.11.2016

Index:Yes/No
svki

To

1.The I Additional Family Court, Chennai

2.The Family Court, Salem

K.K.SASIDHARAN,J.

(svki)

Transfer CMP Nos.209 and
324 of 2016

23.11.2016
<http://www.judis.nic.in>