

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:27.04.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

Tr.C.M.P.No.270 of 2016
and
C.M.P.No.7465 of 2016

K.Thrijitha

... Petitioner

Vs

P.Baskar

... Respondent

Transfer Civil Miscellaneous Revision Petition filed under Section 24 of the Civil Procedure Code to transfer H.M.O.P.19 of 2014 pending before the Sub Court, Poonamallee to Additional Family Court, Chennai.

For Petitioner: Mr.K.Parameshwari

O R D E R

This Transfer Civil Miscellaneous Petition has been filed for withdrawal of H.M.O.P.No.19 of 2014 pending on the file of the Subordinate Judge, Poonamallee and to transfer the same to the file of Additional Family Court, Chennai.

2. The wife is the petitioner and the husband is the respondent. The husband has filed H.M.O.P.No.19 of 2014 on the file of the Sub-Court, Poonamallee for divorce under Section 13 (ia)(ib) of Hindu Marriage Act, 1955. After receiving summons in the said H.M.O.P, the petitioner (wife) seems to have filed a maintenance case in the Family Court, Chennai. In the maintenance case, she has stated that she is residing under the care of one K.Amarnath at No.5, Ghana Bagh Street, Triplicane, Chennai - 600 005. The Transfer Miscellaneous Petition came to be preferred stating that M.C.No.82 of 2015 pending on the file of the Additional Family Court, Chennai and H.M.O.P.No.19 of 2014 pending on the file of Sub-Court, Poonamallee involve same issues and that for having both the cases tried in one and the same Court, H.M.O.P.No.19 of 2014 should be transferred from the Sub-Court, Poonamallee to the Additional Judge, Family Court, Chennai.

3. This matter stands listed today for admission. The submissions made by the learned counsel for the petitioner are heard. Materials are also perused.

4. The petitioner chose to file a maintenance case in M.C.No.82 of 2015 on the file of the Family Court, Chennai under Section 125 of Cr.P.C. The same came to be filed after receiving summons in H.M.O.P.No.19 of 2014 filed by the respondent on the file of the Sub Court, Poonamallee. The reason assigned in the transfer C.M.P in that the H.M.OP and M.C involve same issues and they should be tried in one and the same Court. It is not correct that the issues involved in the maintenance case filed under Section 125 of the Court of Criminal Procedure and the issues involved in the H.M.O.P are one and the same. One is a criminal case and the other is a civil case. Both cannot be clubbed. Hence, the said reason assigned for seeking transfer of the H.M.O.P cannot be sustained.

5. Of course, Section 19(iii-a) of the Hindu Marriage Act is intended to confer a benefit on the wife by making the Court having jurisdiction over the place wherein the wife resides also as a jurisdictional Court. But, such a benevolent provision cannot be allowed to be misused with a view to drag the husband to a place inconvenient to him. The bonafide of the petitioner should also be a factor to be considered by the Court while dealing with the petition for transfer. In the present case, though the petitioner has made a plea that she had undergone kidney transplantation, she has not chosen to produce any proof of having undergone kidney transplantation. For the said reasons, this Court comes to the conclusion that the Transfer Civil Miscellaneous Petition deserves to be dismissed at the stage of admission itself.

6. Accordingly, the Transfer Civil Miscellaneous Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge, Poonamallee.
2. The Additional Family Court, Chennai.

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JSV(CO)
EU 10.06.16