

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.03.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

Tr.C.M.P.No.48 of 2016

and C.M.P.No.850 of 2016

S.Janci Petitioner /Respondents

Vs.

M.Dinesh Kumar Respondent/Petitioner

Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C. to withdraw and transfer the above said H.M.O.P.No.1179 of 2015 on the file of the Hon'ble Family Court, Coimbatore to the file of the Hon'ble Family Court at Tirunelveli.

For Petitioner : Mr.P.Gunaraj

For Respondent : Mr.B.R.Shankaralingam

O R D E R

Though the respondent took time for filing counter, no counter has been filed till today. Hence, this Court deems it appropriate to hear the oral submissions and pass orders. The submissions made by Mr.P.Gunaraj, learned counsel for the petitioner and by Mr.B.R.Shankaralingam, learned counsel for the respondent are heard. Materials available are also perused.

2. The petitioner herein is the wife of the respondent herein. The respondent herein has filed a petition in H.M.O.P.No.1179 of 2015 on the file of the Family Court, Coimbatore for divorce on the ground of desertion. The petitioner in the transfer Civil Miscellaneous Petition has approached this Court, with this petition for the transfer of the above said H.M.O.P. from the file of the Family Court, Coimbatore to the file of the Family Court, Tirunelveli to be tried along with another petition filed by her, namely, H.M.O.P.No.269 of 2015 for restitution of conjugal rights.

3. When one of the couple files a petition for divorce and the other files a petition for restitution of conjugal rights, it is not only desirable but also necessary to have both the cases tried jointly in one and the same Court. The reason is as follows:

"In case of grant of divorce, the petition for restitution of conjugal rights will fail. In case of grant of decree for restitution of conjugal rights, the petition for divorce will fail."

They are in the nature of claim and counter claim and hence, both these petitions are to be tried together. What the petitioner herein seeks is, the transfer of the H.M.O.P. filed by her husband to the Court in which her H.M.O.P. is pending, for joint trial. So far as the choice of place of suing is concerned, Section 19[iii-a] of the Hindu Marriage Act, 1955 [both the parties are admittedly Hindus] gives an edge to the wife over the husband, which benefit cannot be lightly denied, except in cases wherein there are valid reasons for such denial.

4. Hence, this Court comes to the conclusion that the respondent cannot have any valid objection for the transfer of H.M.O.P.No.1179 of 2015 from the file of the Family Court, Coimbatore to the file of the Family Court, Tirunelveli to be tried along with H.M.O.P.No.269 of 2015.

5. In the result, the transfer Civil Miscellaneous Petition is allowed and the H.M.O.P.No.1179 of 2015 is withdrawn from the file of the Family Court, Coimbatore and transferred to the file of the Family Court, Tirunelveli to be tried jointly with H.M.O.P.No.269 of 2015 pending on the file of the said Court. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Judge,
Family Court, Coimbatore.

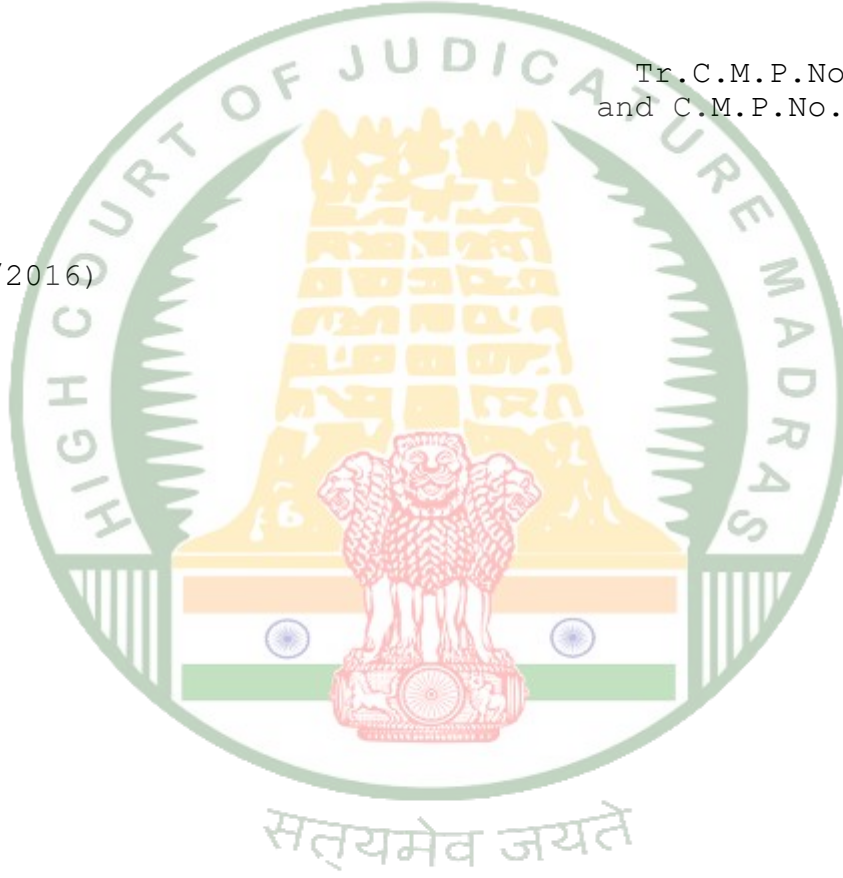
2.The Judge,
Family Court, Tirunelveli.

+1cc to Mr.P.Gunaraj, Advocate, S.R.No.16789

+1cc to Mr.B.R.Shankaralingam, Advocate, S.R.No.16868

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vgi(CO)
srg(29/03/2016)



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