

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

TR CMP NO.488 OF 2016

AND CMP NO.13335 OF 2016

M.Bhuvaneswari ... Petitioner

Versus

T.Saravanan ... Respondent

PRAYER: Petition filed under section 24 of the Code of Civil Procedure to withdraw and transfer the H.M.O.P.No.890 of 2016 pending on the file of the learned I Additional Judge, Family Court, Chennai to the file of the learned Family Court Judge at Erode to be tried along with M.C.No.33 of 2016.

For Petitioner : Mr.P.S.Basker

For Respondent : Mr.N.Srinivasan

O R D E R

The respondent initiated proceedings in H.M.O.P.No.890 of 2016 before the First Additional Family Court, Chennai, praying for a decree of divorce.

2. The petitioner, on the other hand, filed a Maintenance Case in M.C.No.33 of 2016 before the Family Court, Erode. The petitioner has come up with this petition for transfer of proceedings in H.M.O.P.No.890 of 2016 to the Family Court at Erode for the purpose of trial along with M.C.No.33 of 2016.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

4. The petitioner is a resident of Erode. The proceedings in H.M.O.P.No.890 of 2016 initiated by the respondent is pending on the file of First Additional Family Court, Chennai. According to the petitioner, she is residing at Erode along with her minor child. It is the grievance of the petitioner that it would not be possible for her to appear regularly before the Family Court at Chennai for the purpose of defending the proceedings in H.M.O.P.No.890 of 2016. There is nothing on record to suspect the bonafides in filing this transfer petition.

5. 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.

6. There are two proceedings now pending before two different Courts. 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. I am therefore of the view that the Transfer Civil Miscellaneous Petition deserves to be allowed.

7. The proceedings H.M.O.P.No.890 of 2016 is withdrawn from the file of First Additional Family Court, Chennai and is transferred to the file of Family Court, Erode, for disposal along with M.C.No.33 of 2016.

8. The learned counsel for the respondent submitted that the respondent is doing a petty business and it would not be possible for him to appear regularly before the Family Court at Erode.

9. 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.

10. The Transfer Civil Miscellaneous Petition is allowed with the above observation. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

-sd/-

Assistant Registrar

/ TRUE COPY /

Sub-Assistant Registrar

TK

To

1.The 1st Additional Judge, Chennai.

2.The Judge Family Court , Erode.

+1 cc to MR.P.S.BASKAR Advocate SR.NO. 29019

+1 cc to MR.N.SRINIVASAN, Advocate SR.NO. 58886

TR CMP NO.488 OF 2016

lrs[co]

RD 11/11/2016