

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.03.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

Tr.C.M.P.No.98 of 2016
and C.M.P.No.2162 of 2016

M.Jayanthi

... Petitioner/Respondent

Vs.

K.Damodaran

.... Respondent/Petitioner

Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C. to withdraw the H.M.O.P.No.70 of 2016 on the file of the I Additional Family Court, Chennai by transferring the same to proceed along with H.M.O.P.No.3 of 2016 on the file of the Subordinate Court, Tindivanam.

For Petitioner : Mr.S.Muthiah

For Respondent : Mrs.V.Bhavani Subburayan
for M/s.Royan Law Associates

O R D E R

Respondent has entered appearance through counsel.
The arguments advanced on both sides are heard.

2. This is a petition filed under Section of 24 of C.P.C. for the transfer of H.M.O.P.No.70 of 2016 filed by the respondent herein on the file of the I Additional Judge, Family Court, Chennai to the Sub Court, Tindivanam to be tried along with H.M.O.P.No.3 of 2016 filed by the petitioner herein in the said Court.

3. No doubt, both the cases have been filed in the Courts having jurisdiction. But, the Original Petition filed by the husband being one for divorce and the Original Petition filed by the wife for restitution of conjugal rights have to be tried in one and the same Court to avoid conflict on decisions. Grant of divorce will negative the prayer for restitution of conjugal rights and vice versa. What the petitioner seeks is, to transfer the divorce Original Petition filed by the husband to the Court in which, her petition for restitution of conjugal rights is pending for the purpose of both the cases being tried together.

4. This Court does not find any lack of bonafide in such a prayer for transfer. Moreover, after the introduction of Section 19[iii-a] of the Hindu Marriage Act, 1955, when the wife comes forward with such a prayer for transfer of the H.M.O.P. to her place of residence, it must be liberally considered. If such a liberal consideration is made, this Court has to give a finding in this petition, in favour of the petitioner herein regarding the prayer for transfer of the divorce petition filed by the husband to the Court in which, the Original Petition filed by the wife is pending for restitution of conjugal rights.

5. For all these reasons stated above, the transfer Civil Miscellaneous Petition is allowed and the H.M.O.P.No.70 of 2016 pending on the file of the I Additional Judge, Family Court, Chennai is withdrawn and transferred to the file of the Subordinate Judge, Tindivanam to be tried jointly with H.M.O.P.No.3 of 2016 pending on the file of the said Court. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(AS)

//True Copy//

Sub Assistant Registrar

gya

To

1. The Judge
Ist Additional Family Court,
Chennai.

2. The Subordinate Judge,
Tindivanam.

+1 cc to Mr.S.Muthaiah, Advocate, sr.16082

Tr.C.M.P.No.98 of 2016
and C.M.P.No.2162 of 2016

sr co
kra 31.03.2016