



WEB COPY

1

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :25.01.2016

CORAM

THE HON'BLE MR. JUSTICE T.MATHIVANAN

Tr.CMP Nos.461 and 462 of 2015

&

M.P(MD).No.1 of 2015 & C.M.P (MD) No.202 and 203 of 2016

A.Balanagini @ Gowri

... Petitioner /Respondent
in both petitions

Vs.

N.Ashok Viswanathan

... Respondent/Petitioner
in both petitions

Prayer in Tr.C.M.P (MD) No.461 of 2015: Transfer Civil Miscellaneous Petition filed under Section 24 of the Code of Civil Procedure to withdraw the matrimonial proceedings in H.M.O.P.No.165 of 2013 on the file of the Principal Sub-Court, Tenkasi and transfer it to the Additional Sub-Court, Tenkasi for being tried simultaneously with H.M.O.P.No.32 of 2015.

Prayer in Tr.C.M.P (MD) No.462 of 2015: Transfer Civil Miscellaneous Petition filed under Section 24 of the Code of Civil Procedure to withdraw the matrimonial proceedings in H.M.O.P.No.32 of 2015 on the file of the Principal Sub-Court, Tenkasi and transfer it to the Additional Sub-Court, Tenkasi for being tried simultaneously with H.M.O.P.No.165 of 2013.

For Petitioner : Mr.T.Selvan

For Respondents : Mr.A.Anandan

O R D E R

These two transfer petitions have been filed by the petitioner to withdraw the matrimonial proceedings in H.M.O.P.No.165 of 2013 and H.M.O.P.No.32 of 2015 from the file of the learned Principal Subordinate Judge, Tenkasi and transfer them to the file of the learned Additional Subordinate Judge, Tenkasi for being tried simultaneously.

2. With the issue involved in both the transfer petitions is one and the same, they have been consolidated together, heard and being disposed of in this common order.



3. The petitioner herein is the wife of the respondent. The respondent herein Mr. Ashok Viswanathan had originally filed the matrimonial proceedings as against the petitioner herein in H.M.O.P.No.61 of 2011 on the file of the Sub-Court, Srivilliputhur for divorce. That petition was transferred to the Principal Sub-Court, Tenkasi and re-numbered as H.M.O.P.No.165 of 2013. The petitioner had also filed another petition in H.M.O.P.No.32 of 2015 on the file of the Principal Sub-Court, Tenkasi and thereby sought the relief of restitution of conjugal rights. Both the matrimonial proceedings viz. H.M.O.P.No.165 of 2013 and H.M.O.P.No.32 of 2015 are pending on the file of the very same Court i.e., the Principal Sub-Court, Tenkasi.

4. What it transpires from the affidavit filed by the petitioner is that previously the respondent had filed a revision petition in C.R.P.No.2309 of 2015 before this Court under Article 227 of the Constitution of India to direct the Principal Subordinate Judge, Tenkasi to dispose the petition in H.M.O.P.No.165 of 2013 as expeditiously as possible, preferably within the time which may be fixed by this Court. That petition was disposed of on 16.10.2015 with a direction to the learned Principal Sub-Ordinate Court to dispose the petition in H.M.O.P.No.165 of 2013 on merits and in accordance with law within a period of three months from the date of receipt of a copy of that order.

5. Thereafter, the petitioner herein, who is none other than the wife of the respondent has come forward with these two transfer petitions to withdraw the petition in H.M.O.P.No.165 of 2013 and H.M.O.P.No.32 of 2015 respectively from the file of Principal Sub-Court, Tenkasi and to transfer them to the file of Additional Sub-Court, Tenkasi. The reasons assigned by the petitioner for getting the matter transferred are:-

i) The revision petition in C.R.P.No.2309 of 2015 filed by the respondent herein under Article 227 of the Constitution of India was disposed of in her absence with a direction to the learned Principal Subordinate Judge to dispose the matrimonial proceedings within three months from the date of receipt of the copy of the order.

ii) The petitioner had filed a memorandum on 16.03.2015 in H.M.O.P.No.165 of 2013 to try the said case along with the petition in H.M.O.P.No.32 of 2015 jointly. This memorandum was objected by the respondent by filing a memo of objection and after hearing both sides, the learned Principal Subordinate Judge had rejected the memorandum filed by the petitioner on 06.04.2015.



6. Only under this circumstance, she happened to file these two transfer miscellaneous petitions before this Court to withdraw the above said matrimonial proceedings from the file of the Principal Subordinate Judge, Tenkasi and to transfer the same to the file of Additional Subordinate Judge, Tenkasi. On perusal of the grounds of transfer petitions, this Court is of view that the petitioner herein had not made out a prima facie case to get the above said matrimonial proceedings transferred from the file of the Principal Subordinate Judge, Tenkasi.

7. It is significant to note here that the petitioner had earlier filed a transfer petition before the District Court, Tirunelveli on 16.11.2015 to transfer the matrimonial proceedings in H.M.O.P.No.165 of 2013 and H.M.O.P.No.32 of 2015 from the file of the Principal Subordinate Judge, Tenkasi to the file of Additional Subordinate Judge, Tenkasi for being tried simultaneously. That petition was not pressed by the petitioner and thereafter, she has come forward with these two petitions before this Court.

8. It may be relevant to note here that both the Principal Sub-Court as well as the Additional Sub-Court at Tenkasi are situated within the same campus. It is understood from the averments of the affidavit filed by the petitioner that she was aggrieved by the rejection of her memorandum by the Principal Sub-Court to try both the matrimonial proceedings jointly. Excepting this reason, no other reason is assigned for the satisfaction of this Court to withdraw and transfer the above said matrimonial proceedings from the file of Principal Sub-Court, Tenkasi. The petitioner has also not stated any valid ground which instigated or induced or accelerated her to get the transfer petition filed by her withdrawn from the file of the District Court, Tirunelveli.

9. Section 22 of the Code of Civil Procedure (hereinafter referred to as "the Code") deals with power to transfer suits which may be instituted in more than one Court. Section 23 of the Code envisages as to what Court application lies. Sub-Sections (1) to (3) of Section 23 are enacted as under:

(1) Where the several Courts having jurisdiction are subordinate to the same Appellate Court, an application under section 22 shall be made to the Appellate Court.

(2) Where such Courts are subordinate to different Appellate Courts but to the same High Court, the application shall be made to the said High Court.

(3) Where such Courts are subordinate to different High Courts, the application shall be made to the High Court within the local limits of whose jurisdiction the Court in which the suit is brought is situate.



10. Section 24 of the Code of Civil Procedure stipulates general power of transfer and withdrawal. Sub-sections (1) to (3) of Section 24 is extracted as under:

WEB COPY

24. General power of transfer and withdrawal- (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage-

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and-

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which is thereafter to try or dispose of such suit or proceeding] may, subject to any special directions in the case of any order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of this section,- (a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b) "proceeding" includes a proceeding for the execution of a decree or order.

11. As stated in Section 23 of the Code, since the additional subordinate Court as well as the Principal Subordinate Court, Tenkasi are coming under the appellate jurisdiction of the Principal District Court, Tirunelveli the petition for transfer shall have to be made on the file of the learned Principal District Judge, Tirunelveli. Though the transfer petition could be made as contemplated under Section 24 of the Code, both before the District Court as well as before



the High Court, the petitioner shall have to invoke the jurisdiction of the District Court alone as the transfer which is sought to be effected is within the local limits of the Principal District Court, Tirunelveli. As explained in Clause (a) to sub-section (3) of Section 24, Courts of Additional and Assistant judges shall be deemed to be sub-ordinate to the District Court. As per Section 15 of the Code, every suit shall be instituted in the Court of the lowest grade competent to try it. Similarly, even though the High Court and the District Court are having power to transfer as contemplated under Section 15 of the Code, the transfer application shall have to be filed in the Court of lowest grade i.e., before the Principal District Judge, Tirunelveli.

12. On coming to the instant case on hand, previously, the petitioner had filed a transfer petition before the District Court, Tirunelveli and subsequently it was withdrawn by her voluntarily. But, the reason for the withdrawal has not been stated. As observed in the foregoing paragraphs both the matrimonial proceedings viz., H.M.O.P.No.165 of 2013 and H.M.O.P.No.32 of 2015 are pending trial on the file of the Principal Subordinate Judge, Tenkasi. Without assigning any valid ground, the petitioner has come forward with these two petitions to get the matrimonial proceedings transferred from the file of Principal Sub-Court to the file of Additional Sub-Court, which according to this Court is not discernible and also not sustainable in law.

13. It is to be reiterated that already this Court had directed the learned Subordinate Judge by its order dated 16.10.2015 to dispose the matrimonial proceedings in H.M.O.P.No.165 of 2013 on merits within a period of three months. That order is still hold good. Keeping in view of the above fact, this Court finds that there is no merit in these two petitions.

In the result, these two transfer civil miscellaneous petitions are disposed of with the following direction:-

The learned Principal Subordinate Judge, Tenkasi is directed to dispose the matrimonial proceedings in H.M.O.P.No.165 of 2013 and H.M.O.P.No.32 of 2015 as expeditiously as possible preferably within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)



6

To

The Principal Subordinate Judge,
Principal Sub-Court
Tenkasi

+1cc to M/s.T.Selvan, Advocate in SR No.4613
+1cc to M/s.G.Prabhu Rajadurai, Advocate in SR No.4511

Tr.CMP Nos.461 and 462 of 2015
25.01.2016

gpa
anr/gsv-pm/sar2/22.12.2016/6p/4c