

HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Tr.C.M.P.No.503 of 2016

ORDER :

This is a wife's application under Section 24 of the Code of Civil Procedure, 1908, requesting to withdraw O.P.No.14 of 2016 on the file of the Court of the learned Senior Civil Judge, Proddatur of YSR Kadapa District, and transfer the same to the Court of the learned Additional Senior Civil Judge, Ananthapuram, for trial and disposal along with O.P.No.34 of 2015 in accordance with the procedure established by law.

I have heard the submissions of the learned counsel for petitioner, Sri Narasimhulu Parise, and of Sri V.Nitesh, learned counsel appearing for respondent.

I have perused the material record.

Shorn of unnecessary details, the case of the wife is as follows: "After estrangement between the spouses, she is living with her parents at Kondakinda Kottala of Garladinne Mandal of Ananthapuram District. She is having custody of 5 year old girl child. She is a house wife and she is not having any sources of income. She filed M.C.No.31 of 2015 before the Court of the learned I Additional Judicial Magistrate of First Class, Ananthapuram, for award of maintenance of Rs.20,000/- per month to her and her daughter. Her husband, the respondent, is working as Teacher in a Government school. Only to harass her, her husband filed O.P.No.34 of 2015 in the Court of the learned Additional Senior Civil Judge, Ananthapuram, under Section 9 of the Hindu Marriage Act, 1955, for

restitution of conjugal rights. The said case is filed as a counter blast to the case filed by her and to subject her to hardship. As the respondent is gainfully employed and he has no other responsibilities as those being faced by the wife, it is not difficult for him to travel from his place in Kadapa District to Ananthapur District and attend the Court at Ananthapur, in case his case is transferred as prayed for in the petition of the wife. She is having financial weakness; and she has no capacity to undertake travel to the place where the case was instituted by the husband, more particularly in the light of the fact that she is having custody of a young girl child. Further, the provision of Section 9 of the Hindu Marriage Act, 1955, as amended in the year 2003, gives liberty to the wife to file a petition under the provisions of the said Act before a Court within the local limits of whose ordinary original civil jurisdiction she is residing on the date of presentation of her petition; thus, the statute gives a special status to the wife insofar as the place of suing.”

Case of the respondent apart from the denial of the case of the wife, is that he is always ready and willing to lead marital life with the wife; if this case is also transferred to a Court in Ananthapur District, the possibility of amicable settlement and re-union between the spouses will come to an end once and for all; the OP for restitution of conjugal rights is filed not as a counterblast but with a bonafide intention; since he is a Government Teacher, it is very difficult for him to attend two Court cases at Ananthapur in case this case is also transferred to a Court at Ananthapur; no valid grounds are urged by the wife for ordering transfer of the case filed by him.

At the hearing, learned counsel for the parties reiterated their respective contentions. It is well settled legal position that wife's convenience shall be preferred and shall prevail in the absence of any special circumstances warranting to take a different view. In view of the submissions of learned counsel for petitioner and in the absence of any special circumstances shown to the Court by the husband, this Court is satisfied that sufficient case is made out by the wife for granting relief as prayed for in her petition.

In the result, the Tr.C.M.P. is allowed and O.P.No.14 of 2016 is withdrawn from the file of the Court of the learned Senior Civil Judge, Proddatur, YSR Kadapa District, and is transferred to the Court of the learned Additional Senior Civil Judge, Ananthapur, for trial either simultaneously or jointly with O.P.No.34 of 2015 and disposal in accordance with the procedure established by law. No costs.

Pending miscellaneous applications, if any, shall stand closed.

M. SEETHARAMA MURTI, J

17th November 2016

ajr