

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Tr.C.M.P.No.398 of 2016

&

Tr.C.M.P.No.562 of 2016

ORDER:

O.P.No.173 of 2016 is filed by the husband before the Family Court, Guntur, under Section 13 (1) (ia) & (ib) of the Hindu Marriage Act, 1955, for dissolution of marriage.

1.1 M.C. No.47 of 2016 is filed by the wife before the Family Court, Nellore, under Section 125 of the Code of Criminal Procedure read with Section 7 of the Family Court's Act, 1984, for grant of monthly maintenance.

2. **Tr.C.M.P.No.398 of 2016** is the wife's application under Section 24 read with Section 151 of the Code of Civil procedure, 1908, requesting to withdraw, the OP filed by the Husband from the Family Court, Guntur, and transfer the same to the Family Court, Nellore, for trial and disposal, in accordance with the procedure established by law, along with M.C. filed by her.

2.1 **Tr.C.M.P.No.562 of 2016** is the Husband's petition seeking transfer of the MC filed by the wife from the Family Court, Nellore, to the Family Court, Guntur, for trial and disposal, in accordance with the procedure established by law, along with the OP filed by him.

3. I have heard the submissions of *Sri Penumaka Venkata Rao*, learned counsel for the wife, and *Sri V. S. R. Anjaneyulu*, learned counsel for the husband and perused the material record.

4. Sans serious allegations traded by the parties, which require examination in the main cases, the contentions of the parties, which are relevant for the disposal of these two petitions, are as follows:

5. The case of the wife: 'The wife is presently residing with her sister at Nellore. She filed the maintenance case at Nellore. Her husband who retired from service under a voluntary retirement scheme received retirement benefits and is getting pension. The daughters are residing at their respective places. No one is taking care of her and her welfare. The husband filed the OP in the Court at Guntur. The distance between Nellore and Guntur is more than 300 kilometers. She has no sources of income. It is seldom possible for her to undertake long distance travel to Guntur by incurring huge expenses. She has no relatives at Guntur for taking shelter at Guntur even for one day. The husband who is having good income and who is not having any difficulties as are being faced by the wife can attend the Court proceedings at Nellore.'

6. The case of the husband: 'He retired from service under a voluntary retirement scheme and his second daughter who is unmarried and who is provided a job in the Railways under compassionate appointment scheme is presently residing in Railway quarters at Rajahmundry. The wife is residing with the said daughter at Rajahmundry. She falsely stated that she is residing with her sister at Nellore. The first daughter who is married is residing with her husband. He took voluntary retirement with the specific understanding that the wife shall reside with the second daughter, who shall be provided the job on compassionate grounds, without claiming any maintenance. The salary of the second daughter is the source of income for the wife and the second daughter. The allegations that she has no sources of income and nobody is looking after her and that she is living at the mercy of her sister are all false. He is having life threat at the hands of his wife's sister and husband who are ante-social elements. Though she is residing with the second daughter at Rajahmundry, she intentionally filed MC at Nellore to harass the husband and to get him manhandled, if possible. He is receiving a paltry sum of pension and the same is not even sufficient for his livelihood and medical expenses. It is seldom possible for the husband to travel from Guntur to Nellore.'

7. At the hearing, the learned counsel reiterated the respective contentions of the parties. I have given earnest consideration to the facts and the submissions.

8. Apart from reiterating the case of the wife, her learned counsel would submit that her inconvenience, incapacity, financial weakness, lack of assistance and inability to travel frequently from Nellore to Guntur without any assistance by incurring huge expenses may be considered and her convenience be preferred over that of the husband, who is healthy and financially sound and is in a position to undertake travel to Nellore from Guntur. The learned counsel for the husband while reiterating his pleaded case would submit that the wife is living at Rajahmundry with her second daughter and that as per the specific understanding at the time of providing compassionate appointment to her, she is taking care of her mother, and that the wife having intentionally filed the MC at Nellore is falsely claiming that she is residing at Nellore though she is in-fact residing at Rajahmundry and also received the notices in the OP filed by the husband at Railway Quarters, Rajahmundry.

9. Having due regard to the facts and the submissions, the vital issue for consideration is as to the convenience of which of the two parties is to be preferred. As per settled law, unless there are special circumstances warranting taking a different view, the convenience of the wife has to be looked into, considered and preferred. The husband retired voluntarily from service and is settled at Guntur. The second daughter who was given compassionate appointment in Railways is working at Rajahmundry. The wife filed the case at Nellore, her sister's place, claiming inter alia that no member of the family is taking care of her. However, the husband contends that she is staying with the second daughter in Railway quarters at Rajahmundry, but, she intentionally filed the case at Nellore to cause inconvenience to him. It is also his case that at the time of providing appointment on compassion to the second daughter, it was agreed and settled that she shall take care of and support the mother, his wife, and that, in fact, his wife received the notices in the case filed by him at her daughter's quarters at Rajahmundry, where she is

residing. The driving distance between Guntur and Rajahmundry is about 163 kilometers. The driving distance between Nellore and Guntur is 245 kilometers. The wife is having good terms with her second daughter; and it is not her case that she has any disputes with her second daughter. Considering the interests and conveniences of the parties, which require balancing, and the facts peculiar to the case, this Court is of the considered view that the ends of justice would be met if both the cases are brought to the file of a Court at Rajahmundry, the place of the second daughter, who is unmarried, and with whom the wife can stay conveniently and prosecute her case and defend the case filed by her husband.

10. Accordingly, O.P.No.173 of 2016 filed by the husband before the Family Court, Guntur, and the M.C. No.47 of 2016 filed by the wife before the Family Court, Nellore, are withdrawn from the files of the said Courts and are transferred to the file of the Family Court, Rajahmundry, East Godavari District, for trial, either jointly or simultaneously, and disposal in accordance with the procedure established by law.

11. With the above observations, both the Tr.CMPs are disposed of.

Pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

M. SEETHARAMA MURTI, J

24th October, 2016

Vjl