

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2017

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

Tr.C.M.P.No.253 of 2017

and

C.M.P.No.4764 of 2017

S.Vani @ Prabavathi

... Petitioner

Vs

K.Balamurugan

... Respondent

Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C. to withdraw H.M.O.P.No.15 of 2016 pending on the file of the Court of Principal Subordinate Judge, Tirupur and transfer the same to the file of Family Court, Erode to be tried along with F.C.O.P.No.386 of 2016 pending on the file of the Family Court, Erode.

For Petitioner : Mr.C.E.Pratap

For Respondent : Served-No Appearance

ORDER

This Transfer miscellaneous petition is filed by the wife seeking transfer H.M.O.P.No.15 of 2016 on the file of the Principal Sub Court, Tiruppur, to be tried along with F.C.O.P.No.386 of 2016 on the file of the Family Court, Erode.

2. The petitioner, who is the wife, has filed F.C.O.P.No.386 of 2016 on the file of the Family Court, Erode for divorce. She has also filed M.C.No.18 of 2016 on the file of the Family Court, Erode for maintenance.

3. The respondent/husband has filed H.M.O.P.No.15 of 2016 for restitution of conjugal rights on the file of the Principal Sub Court, Tiruppur.

4. It is stated that the pleadings are complete in all the matters.

5. In paragraph 6 of the affidavit filed in support of the transfer petition, the wife has stated that she is not employed and is dependent on her parents for her livelihood and now residing in her parents' house at Erode. According to her, the

marriage has irretrievably broken down. Therefore, she has filed the petition for divorce. It is also stated that Tiruppur is far from Erode and it would be difficult for her to attend the Court hearings. As stated earlier, when divorce petition and maintenance case filed by the wife are pending on the file of the Family Court, Erode and if the petition filed by the husband is being tried independently before the Principal Sub Court, Tiruppur, it will be inviting conflict of decisions. It is also stated in the affidavit that as per Section 19(iii-a) of the Hindu Marriage Act, 1955, where the wife is the petitioner, the convenience of the wife should be considered.

6. Though the respondent was served with notice through Court as well as privately with the permission of this Court and his name having been printed in the cause list, he has not chosen to enter appearance either in person or through Counsel.

7. Already there are two cases which are pending before the Family Court, Erode. In the interest of justice and in order to avoid conflict of decisions, H.M.O.P.No.15 of 2016 is withdrawn from the file of the Principal Sub Court, Tiruppur and transferred to the file of the Family Court, Erode, to be tried along with F.C.O.P.No.386 of 2016. Accordingly, the petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

srn

To

1.The Principal Subordinate Court,
Tiruppur

2.The Family Court,
Erode.

+1cc to Mr.C.E.Pratap, Advocate, S.R.No.72361

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GN(01/11/2017)