

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2017

CORAM :

THE HONOURABLE Ms. JUSTICE V.M.VELUMANI

Tr.CMP.No.341 of 2017
and CMP. No.6685 of 2017

S.Jaghadeesan ... Petitioner/Respondent

Vs.

B.Radhika ... Respondent/Petitioner

Prayer:- Petition filed under Section 24 of C.P.C., to withdraw and transfer HMOP.No.17 of 2017 on the file of the Principal Family Court, Coimbatore to the file of Family Court, Dharmapuri, to be tried along with MCOP.No.233 of 2016 on the file of the Family Court, Dharmapuri.

For Petitioner : Mr.V.Nandhakumar

For Respondent : Mr.P.Muthamizh Selvakumar

O R D E R

This transfer petition is filed to withdraw the petition in HMOP.No.17 of 2017 pending on the file of the Principal Family Court, Coimbatore and transfer it to the file of the Family Court, Dharmapuri, to be tried along with MCOP. No.233 of 2016 pending before the Family Court, Dharmapuri.

2. The petitioner is the husband and respondent is the wife. The petitioner filed a petition in HMOP. No.233 of 2016 on the file of the Family Court, Dharmapuri against the respondent, for a decree of dissolving the marriage that took place between the petitioner and respondent on 07.7.2014. Both the petitioner and respondent are doctors by profession. The petitioner filed a petition in HMOP.No.17 of 2017 before the Principal Family Court, Coimbatore, for restitution of conjugal rights. Due to the difference of opinion that arose between the petitioner and respondent, they could not lead their matrimonial life and got separated.

3. According to the petitioner, he is working as Assistant Surgeon at Government Primary Health Centre, Palayampudur, Dharmapuri District. The respondent is residing at Pondicherry and pursuing her II Year M.D., (Community Medicine) at Sri Venkateswara Medical College, Ariyur, Pondicherry. The petitioner is a resident of Dharmapuri and due to his profession as Assistant Surgeon in Government Primary Health Centre, Palayampudur, Dharmapuri District, he could not come to Coimbatore to attend the each and every hearing in H.M.O.P.No.17 of 2017 filed by the respondent before the Family Court, Coimbatore. Under the said circumstances, the petitioner has filed the present transfer petition praying to transfer the H.M.O.P.No.17 of 2017 filed by the respondent pending on the file of the Principal Family Court, Coimbatore to the file of Family Court, Dharmapuri, to be tried along with the petition in MCOP.No.233 of 2016 filed by the petitioner against the respondent seeking divorce, before the Family Court, Dharmapuri. The petitioner is of the view that unless both the HMOP proceedings are tried together in the same Court, there will be conflicting judgments, which will affect the parties.

4. The learned counsel appearing for the petitioner has also pointed out that the respondent had earlier filed a transfer petition in Tr.CMP.No.755 of 2016 before this Court seeking to transfer the HMOP.No.233 of 2016 filed by the petitioner before the Family Court, Dharmapuri to the Family Court at Coimbatore. In the said matter, the petitioner-husband had agreed to transfer the HMOP.No.233 of 2016 to the file of Family Court, Pondicherry, on the ground that the respondent is residing at Pondicherry and pursuing her post graduation in Sri Venkateswara Medical College, Ariyur, Pondicherry. But the same was opposed by the respondent-wife. In the said circumstances, this Court, vide order dated 27.03.2017 has dismissed the said transfer petition on the ground that the respondent-wife is residing at Pondicherry and seeking transfer to Family Court, Coimbatore cannot be entertained. Hence, the petitioner contends that the only intention of the respondent is only to stall the proceedings in the divorce petition filed by the respondent.

5. The respondent-wife also filed a counter affidavit before this Court and submitted that her stay at Pondicherry is only temporary and for education purpose only. She will be completing her post-graduation course in M.D. (Community Medicine) in the month of April 2018 and thereafter, she will be

residing at Coimbatore permanently. The distance between Coimbatore and Dharmapuri is around 250 kilometers. Hence, the respondent finds it difficult for her to attend the court proceedings at Dharmapuri and prays for dismissal of the present transfer petition filed by the petitioner.

6. It is seen that the petition in HMOP.No.233 of 2016 filed by the petitioner, and HMOP.No.17 of 2017 filed by the respondent are pending before two different Courts. The petitioner is seeking divorce, while the respondent has filed the petition for restitution of conjugal rights. Considering the fact that the petitioner-husband is working as Assistant Surgeon in at Government Primary Health Centre, Palayampudur, Dharmapuri District and the respondent-wife is doing her II year M.D., in Community Medicine in Sri Venkateswara Medical College, Ariyur, Pondicherry, and as stated by the learned counsel for the respondent that the respondent-wife will complete her course in the year April '2018, this Court is of the view that the cause of action in both the petitions are same and therefore, if the two different reliefs sought for by the parties are decided by the same Court, it would avoid conflicting judgments.

7. In view of the said facts and in the interest of justice, this Court is of the view that the HMOP. No.233 of 2016 filed by the petitioner pending on the file of Family Court, Dharmapuri and HMOP.No.17 of 2017 filed by the respondent pending on the file of Family Court, Coimbatore are ordered to be withdrawn from their file and are transferred to the file of Principal Sub Court, Pondicherry. It would also be appreciated that if the case is transferred to Sub Court, Pondicherry, the parties are not required to attend each and every hearings in the HMOP proceedings and can prosecute the case through their counsels. However, the parties are required to appear before the trial Court at the time of trial, or as and when required by the learned Judge. The Family Court, Dharmapuri and Family Court, Coimbatore are directed to transmit the records pertaining to the petitions in HMOP.No.233 of 2016 and HMOP.No.17 of 2017 pending on their respective file to the Principal Sub Court, Pondicherry, within a period of two weeks from the date of receipt of a copy of this order. On receipt of the records, the learned Principal Sub Judge, Pondicherry is directed to conduct the joint trial of the cases and dispose of the same, as expeditiously as possible within a period of five months from the date of receipt of a copy of this order.

8. Accordingly, this Transfer Civil Miscellaneous petition is ordered. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Family Court,
Coimbatore.

2.The Family Court
Dharmapuri.

3.The Principal Sub Court
Pondicherry.

+lcc to Mr.P.Muthamizh Selvakumar, Advocate Sr.43589

+lcc to Mr.V.Nandhakumar, Advocate Sr.43092

Tr.C.M.P. No.341 of 2017
and CMP.No.6685 of 2017

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