

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2017

CORAM :

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

Tr.C.M.P. No.53 of 2017

and C.M.P.No.1138 of 2017

S. Sudha ... Petitioner

versus

S. Harikrishna ... Respondent

Prayer:- The Petition is filed under Section 24 of C.P.C. praying to withdraw and transfer H.M.O.P.No.87 of 2016 from the file of Subordinate Court at Bhavani, Erode District to the file of Additional District Judge, Family Court, Salem or any competent Court to try the same along with F.C.O.P.No.128 of 2016.

(Prayer amended vide order of this Court dated 30.11.2017 made in C.M.P.No.20715 of 2017 in Tr.C.M.P.No.53 of 2017).

For Petitioner : Mr.G.Muthukumar

For Respondent : Sd-No appearance

O R D E R

The petitioner/wife has filed this transfer Civil Miscellaneous Petition seeking to withdraw H.M.O.P.No.87 of 2016, pending on the file of Subordinate Court, Bhavani, Erode District and transfer the same to the file of Additional District Judge, Family Court, Salem to be tried along with F.C.O.P.No.128 of 2016. सत्यमेव जयते

2. The respondent/husband has filed H.M.O.P.No.87 of 2016 under Section 9 of the Hindu Marriage Act, before the Sub Judge, Bhavani for restitution of conjugal rights. The petitioner/wife has filed F.C.O.P.No.128 of 2016 under Section 13(1)(i-a) of the Hindu Marriage Act, before the Additional District Judge, Family Court, Salem for dissolving the marriage solemnized between the petitioner and the respondent on 01.12.2014 on the grounds of mental and physical torture.

3. It is stated in the affidavit filed in support of the petition that the petitioner/wife is residing in Salem and is working as District Co-ordinator, Sarva Siksha Abhiyam Scheme

under the control of Chief Educational Officer, Salem and her meager earnings are just enough to take care of her needs. She has also expressed her difficulty to travel to Bhavani as she has to seek the assistance of her aged parents for each hearing. Hence, the petitioner seeks for the above transfer.

4. Heard the learned counsel for the petitioner. Though the respondent served with notice, he has not entered appearance either in person or through counsel.

5. As the O.P. filed by the respondent/husband is for restitution of conjugal rights and the O.P. filed by the petitioner/wife is for divorce, in order to avoid any conflict in decision, it would be appropriate to direct joint trial of both the cases.

6. Considering Section 19(iii-a) of the Hindu Marriage Act, which gives preference for the wife in respect of the place where she resides, this Court is inclined to transfer H.M.O.P.No.87 of 2016, pending on the file of Subordinate Court, Bhavani, Erode District to the file of Additional District Judge, Family Court, Salem, to be heard along with F.C.O.P.No.128 of 2016, which is already pending.

7. Accordingly, the Transfer Civil Miscellaneous Petition is allowed and H.M.O.P.No.87 of 2016, pending on the file of Subordinate Court, Bhavani, Erode District shall stand withdrawn and transferred to the file of Additional District Judge, Family Court, Salem, to be tried along with F.C.O.P.No.128 of 2016. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rsi

To

1. The Subordinate Judge,
Bhavani, Erode District.

2. The Additional District Judge,
Family Court, Salem.

+lcc to Mr.G.MUTHUKUMAR, Advocate, S.R.No. 85030

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GMI (CO)

TR(12/01/2018)