

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2017

CORAM

THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA

TR.CMP.Nos.191 and 193 of 2016

and

C.M.P.Nos.5353 and 5376 of 2016

D.Kesavan

.. Petitioner in
Tr.C.M.P.No.191/2016
and Respondent in
Tr.C.M.P.No.193/2016

vs

D.Anitha

.. Respondent in
Tr.C.M.P.No.191/2016
and petitioner in
Tr.C.M.P.No.193/2016

Prayer: Transfer Civil Miscellaneous petitions filed under Section 24 of the Code of Civil Procedure seeking (i) to withdraw HMOP No.124 of 2015 pending on the file of the Sub Court Krishnagiri and to transfer the same to the I Additional Family Court, Chennai to be tried along with O.P.No.3212 of 2015 and (ii) to withdraw OP No.3212 of 2015 pending on the file of the I Additional Family Court, Chennai and to transfer the same to the file of Sub Court, Krishnagiri, to be tried along with HMOP No.124 of 2015.

For Petitioner : Ms.K.M.Valsala
in TR.C.M.P.No.
191/2016 and
respondent in Tr.C.M.P.
No.193 of 2016

For Respondent : Mr.E.Rajesh
in TR.C.M.P.No.
191/2016 and
petitioner in Tr.C.M.P.
No.193 of 2016

COMMON ORDER

Tr.C.M.P.No.191 of 2016 has been filed by the husband seeking to withdraw HMOP No.124 of 2015 filed by the wife and pending before the Sub Court, Krishnagiri and to transfer the same to the file of the I Additional Family Court, Chennai to be tried along with O.P.No.3212 of 2015 filed by him.

Tr.C.M.P.No.193 of 2016 has been filed by the wife seeking to withdraw OP No.3212 of 2015 filed by the husband and pending before the I Additional Family Court, Chennai and to transfer the same to the file of the Sub Court, Krishnagiri to be tried along with HMOP No.124 of 2015 filed by her.

2. For the sake of convenience, the parties are referred to as husband and wife.

3. The case of the husband is as follows:

According to him, he has filed OP No.3212 of 2015 before the Family Court at Chennai under Section 13(1)(ia) of the Hindu Marriage Act, 1955 seeking divorce on the ground of cruelty. According to him, after marriage, they had lived in Chennai only for three weeks and thereafter had left for United States of America. They gave birth to two children, viz., one boy and a girl. According to him, she was never cordial in the matrimonial home and often picked up quarrel with him. She always threatened him by stating that he should not contact his parents at any time. Though many attempts of mediation were conducted between them both in U.S.A and in India, to change her behaviour, it ended in futile. After some time, without even informing him, she has left U.S.A along with their two children to India and she was staying near her aunt's house in Chitlapakkam. After knowing this, the husband had made arrangements for her to get a house rented in his name for his wife and children to live, though he was still staying in USA. Since the wife threatened that she will commit suicide after killing their two children, thinking that he will not be able to live any longer with the lady who has no love and affection towards her husband has filed the petition seeking divorce. After receipt of summons from the Family Court, Chennai, in order to harass him, the wife has filed a petition before the Sub Court, Krishnagiri for restitution of conjugal rights, even though she is residing at Chennai in Medavakkam and the children are also studying in Chennai. Hence, the above petition seeking transfer.

4. Per contra, the wife states that she was never allowed by the parents of the husband to lead a happy married life and they

were torturing her in many ways. As they are threatening her frequently, she has shifted her residence to Krishnagiri to live along with her parents leaving the children under the custody of her aunty and uncle. It is her further case that she has filed a petition before the Sub Court, Krishnagiri for restitution of conjugal rights and also seeking interim maintenance. Since the doctor has advised her not to travel, she is seeking transfer of the petition filed by the husband before the Family Court at Chennai to the Sub Court, Krishnagiri.

5. Heard both sides.

6. Admittedly, as stated by the husband, the wife is living in Chennai at Medavakkam and the two children are studying in St.John's Public School, Jalladianpet, near Medavakkam. The above fact is evidenced from the perusal of the additional typed set of papers filed by the husband. It is also seen that the husband is paying the rental charges for the wife and the children to live in Chennai and that he is also taking care of the educational expenses of the children. Further, in para No.4 of the affidavit filed by the wife, she herself has stated as follows:

"4. I submit that since, the parents of the respondent have threatening me frequently, I have no other option except to leave from the matrimonial house and subsequently, I left to my parents house at Krishnagiri, at the same time, I did not want to interfere with my children studies, hence, I allowed my children to stay at Medavakkam house under the care of my aunty and uncle, as the respondent left the matrimonial house without any valid reason. I submit that the payment of rent was made by the respondent for the premise where our children are residing. I am not denying that the school fees also made by the respondent, but my children are born and brought up in USA and now studying in International School, hence, I am unable to meet their daily expenses".

When that being the position, it is clear that the wife in order to take revenge as against the husband has filed the restitution petition before the Sub Court, Krishnagiri. As a responsible mother of two minor children, she could have very well stayed with them in Chennai without leaving their custody to her aunty, and that too, when the rent, school expenses and other incidental expenses are being met by the husband. It is also not the case of the wife that she is working in Krishnagiri and therefore, she is seeking transfer.

7. From the above stated facts, it is clear that the wife had deliberately filed a petition before the Sub Court, Krishnagiri to harass the husband and seeking transfer of the divorce petition filed by him before the Family Court at Chennai to be tried along with the petition filed by her.

8. Hence, in the interest of justice, the following order is passed:

(i) HMOP No.124 of 2015 filed by the wife before the Sub Court, Krishnagiri is withdrawn and is transferred to the file of the I Additional Family Court, Chennai to be tried along with O.P.No.3212 of 2015 filed by the husband for divorce.

(ii) The Sub Court, Krishnagiri is directed to send all the papers pertaining to HMOP No.124 of 2015 to the I Additional Family Court, Chennai, immediately, on receipt of a copy of this order.

9. In the result,

(a) Tr.C.M.P.No.191 of 2016 filed by the husband is allowed.

(b) Tr.C.M.P.No.193 of 2016 filed by the wife is dismissed.

No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The I Additional Family Court, Chennai.

2. The Subordinate Judge, Krishnagiri.

+1cc to Mr.K.S. Kumar SR. 108555

TR.CMP.Nos.191 and 193 of 2016

PVS (CO)
VR(3/3/2017)