

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2017

CORAM :

THE HONOURABLE Ms.JUSTICE V.M.VELUMANI

Tr.C.M.P. Nos.744 & 745 of 2016
and
C.M.P.No.19255 & 19256 of 2016

M.Illakiya ... Petitioner in both
Vs.

P.Ezhilarasu ... Respondent in both

Common Prayer:- Petitions filed under Section 24 of C.P.C., praying to withdraw the HMOP.Nos.61 & 62 of 2016 from the file of the Subordinate Court, Dharmapuri and transfer it to the file of Family Court, Dharmapuri, for being tried along with M.C.No.31 of 2016 pending on its file.

For Petitioner : Mr.R.Srinivas

For Respondent : Mr.Ma.P.Thangavel

COMMON ORDER

These petitions have been filed to withdraw the HMOP. Nos.61 & 62 of 2016 from the file of the Sub Court, Dharmapuri and transfer it to the file of the Family Court, Dharmapuri, for being tried along with M.C.No.31 of 2016 pending on its file.

2. The petitioner is the wife and respondent is the husband. The marriage between the petitioner and the respondent was solemnised on 19.06.2013 as per Hindu rites and customs. After marriage, both the petitioner and respondent started their matrimonial life at Ottapatti, Dharmapuri District, and subsequent to her husband's employment in Coimbatore, they got shifted to Coimbatore. Later, due to the dispute that arose between them, they got separated and the petitioner since then resided at her parent's house at Dharmapuri.

3. The respondent filed HMOP.No.62 of 2016 before the Sub Court, Dharmapuri seeking divorce against the petitioner. While so, the petitioner filed HMOP.No.61 of 2016 on the file of Sub Court, Dharmapuri, for restitution of conjugal rights. The

petitioner also filed M.C.No.31 of 2016 on the file of Family Court, Dharmapuri claiming maintenance under Section 125 of Cr.P.C., and the same is pending. Under the said circumstances, the petitioner has filed the present transfer petition seeking to transfer both the HMOP. No.61 of 2016 and HMOP.No.62 of 2016 pending on the file of Sub Court, Dharmapuri to be withdrawn from its file and transfer it to Family Court, Dharmapuri, to be tried along with M.C.No. 31 of 2016 pending on its file.

4. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

5. On a perusal of the records placed before this Court, it is seen that prior to the filing of this petition, the petitioner has filed the Tr.CMP.No.180 of 2015 before this Court praying to transfer the earlier HMOP.No.1365 of 2014 filed by the respondent seeking divorce, pending on the file of Family Court, Coimbatore to be withdrawn and transferred to Family Court, Dharmapuri. In the meantime, the petitioner also filed HMOP.No.16 of 2015 for restitution of conjugal rights. Vide order of this Court dated 15.06.2016, the said Tr.CMP.No.180 of 2015 was allowed.

6. According to the petitioner, without the consent of the petitioner, the earlier counsel who appeared on behalf of petitioner had given his approval to transfer the said HMOP.No.1365 to Sub Court, Dharmapuri (instead of Family Court, Dharmapuri) and the same is now re-numbered as HMOP.No.62 of 2016 and is pending on the file of Sub Court, Dharmapuri. It is further submitted by the petitioner that all the matrimonial matters pending on the file of Sub Court, Dharmapuri was transferred to Family Court, Dharmapuri except her case, which she only came to know at a later stage on verification with her present counsel before the trial Court.

7. The respondent filed counter and denied the averments made by the learned counsel for the petitioner. It is submitted by the counsel for the respondent only at the instance of the petitioner-wife, the case was transferred to Sub Court, Dharmapuri on the ground that the petitioner had made a submission before the trial Court at Coimbatore, that if the case is transferred to Family Court, Dharmapuri, the presence of parties are compulsory for each and every hearing, and as they both are employed, they both find it difficult to attend the court proceedings. Hence, the petitioner had only sought transfer of the HMOP proceedings to Sub Court, Dharmapuri, but now denying the same is only miscarriage of justice.

8. It is also stated in the counter that at the time of hearing, the petitioner-wife failed to appear to contest the case in HMOP proceedings before Sub Court, Dharmapuri and ex-parte order was passed and thereafter, no petition was filed by her to set aside the ex-parte order. It is contended by the respondent that the intention of the petitioner was only to drag on the proceedings and not to contest the case. It is further submitted by the counsel that in the petition in M.C.No.31 of 2016 claiming maintenance, both side evidences were closed and the counsel appearing for the petitioner before the trial Court have completed his arguments and now the matter has been posted for orders. At this stage, the petitioner filed the present transfer petition seeking transfer is not acceptable and is liable to be dismissed.

9. Considering the facts and circumstances of the case and on perusing the materials available on record, and the counter affidavit filed by the learned counsel for the respondent before this Court, this Court is of the view that the reasons given by the petitioner praying for transfer is not valid. The present transfer civil miscellaneous petitions are dismissed as devoid of merits. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

The Subordinate Court,
Dharmapuri.

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.41994

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SR(CO)
CS/04/07/17