

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2018

CORAM : THE HONOURABLE MR.JUSTICE N.SESHASAYEE

CRP (PD) No. 3587 of 2011
and MP.No.1 of 2011

Sankari

... Petitioner

Vs

Ongaravelu

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 06.07.2011 passed in Tr.O.P.No.189 of 2010 on the file of the Principal District Court, Cuddalore.

For Petitioner : Mr.P.Mani
For Respondent : No appearance

ORDER

It is a case where revision is filed challenging an order dismissing a transfer petition filed by the revision petitioner for consolidating two independent proceedings, one pending in HMOP.No.35 of 2010 on the file of Sub Court, Cuddalore and another in HMOP.No.130 of 2010 on the file of Principal Sub Court, Cuddalore.

2. The respondent/husband of the petitioner has filed a petition in HMOP.No.35 of 2010 before the Sub Court, Neyveli on the ground of cruelty. The petitioner/wife of the respondent has filed HMOP.No.130 of

2010 before the Principal Sub Court, Cuddalore for restitution of conjugal rights. Both the cases are essentially raised on substantially similar facts and in order to avoid conflict of decision in the matter, the petitioner had moved the Principal District Court, Cuddalore in Tr.O.P.No.189 of 2010 and Vide impugned order dated 06.07.2011, the learned Principal District Judge, Cuddalore dismissed it.

3. Heard the learned counsel for the petitioner, and though the respondent in this case was served with notice, he did not choose to appear.

4. The learned counsel for the petitioner submitted that the only question before the learned District Judge was the husband's petition for divorce and the wife's petition for conjugal rights if tried separately would lead to conflict of decision by two separate Courts and in that context there should be a consolidation of proceedings. However, the learned District Judge has travelled into the facts of the case and has dismissed it on the ground that she has given a false statement when she exaggerated the monthly income of her husband.

5. On perusing the impugned order, the learned Principal District Judge has dismissed it on two grounds: (a) That the reliefs in both the petitions sought to be consolidated by the revision petitioner are different in character and (b) That the revision petitioner had made a false statement

6. For the purpose of consolidating two proceedings, the Court is not required to travel into how the parties have conducted vis-a-vis the cause of action they had put forward. The primary consideration should involve an assessment whether there would be conflicting decisions if both the proceedings are tried separately. It is not necessary that the prayers in both the proceedings must be identical, but, where both the prayers can be considered by deciding a common issue. It is here the learned Judge has fallen in error.

7. This Court, therefore finds merit in this petition and allows the revision petition thereby setting aside the order dated 06.07.2011 passed in Tr.O.P.No.189 of 2010 on the file of the Principal District Court, Cuddalore and accordingly, HMOP.No.35 of 2010 pending on the file of Subordinate Judge, Neyveli is transferred to Subordinate Court, Cuddalore. Since these petitions are pending for considerable length of time, the transferee Court shall dispose of the matter on or before 31.10.2018. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Speaking Order / Non-Speaking Order

ds

N.SESHASAYEE, J.,

ds

To:

- 1.The Principal District Judge
Cuddalore.
- 2.The Subordinate Judge
Cuddalore.
- 3.The Subordinate Judge
Neyveli.



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