

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2018

CORAM :

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

Tr.C.M.P. No.329 & 354 of 2017
and C.M.P.Nos.6325 & 6988 of 2017

S. Saradhabai @ Menaka ... Petitioner in Tr.CMP.No.329/2017/
... Respondent in Tr.CMP.No.354/2017

versus

V. Rajesh Kannah ... Respondent in Tr.CMP.No.329/2017
... Petitioner in Tr.CMP.No.354/2017

Prayer in Tr.C.M.P.No.329 of 2017:-

The Petition is filed under Section 24 of C.P.C. praying to withdraw H.M.O.P.No.123 of 2017 from the file of the Subordinate Court, Tambaram, and transfer the same to the file of Family Court, Salem, to be tried along with F.C.O.P.No.34 of 2017, on the file of the Family Court, Salem.

Prayer in Tr.C.M.P.No.354 of 2017:-

The Petition is filed under Section 24 of C.P.C. praying to withdraw and transfer F.C.O.P.No.34 of 2017 pending on the file of the Family Court, Salem, to the file of the Sub Court at Tambaram to be tried along with H.M.O.P.No.123 of 2017 for disposal in accordance with law.

For Petitioner in Tr.C.M.P.No.329 of 2017/: Mr.K.Selvaraj
For Respondent in Tr.C.M.P.No.354 of 2017

For Respondent in Tr.C.M.P.No.329 of 2017/: Mr.J.Saravanel
For Petitioner in Tr.C.M.P.No.354 of 2017

C O M M O N O R D E R

The wife in the matrimonial proceedings, who is the respondent in Tr.C.M.P.No.354 of 2017, filed Tr.C.M.P.No.329 of 2017, for divorce under Section 13(1-a) of the Hindu Marriage Act, before the Family Court, Salem. The husband, who is the respondent in Tr.C.M.P.No.329 of 2017/the petitioner in

Tr.C.M.P.No.354 of 2017 filed H.M.O.P.No.123 of 2017 for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, before the Subordinate Court, Tambaram.

2. Seeking transfer of the proceedings against them to the file of respective Court, they have filed the above Transfer Civil Miscellaneous Petitions.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

4. It is stated that the petitioner/wife is suffering from Epilepsy and she has got no company to take her to Tambaram from Salem, for the hearings. Similarly, the respondent/husband had also stated that he is working as sales executive in a private company and hence, it would be difficult for him to avail leave and attend the hearings before the Family Court, where the appearance of the parties is mandatory. Besides, he had also stated that the minor child aged about 4 years born out of the wedlock is also living with the respondent/husband and sending him to school and travelling to Salem would disrupt the routine. The learned counsel also referred to G.Saroja Vs. P.Jayavelu, 2009 (4) CTC 171.

5. The parties in both the O.Ps. are one and the same. The relief claimed in the O.Ps. are interlinked. In order to avoid any conflict in decision, it would be appropriate to direct joint trial of both the cases.

6. Considering the facts and circumstances of the case particularly the fact that the petitioner/wife is suffering from Epilepsy and she cannot travel alone and also taking note of Section 19(iii-a) of the Hindu Marriages Act, which gives preference for the wife in respect of the place where she resides, this Court feels it appropriate to transfer H.M.O.P.No.123 of 2017 filed by the respondent/husband from the file of Subordinate Court, Tambaram to the file of Family Court, Salem, to be tried along with F.C.O.P.No.34 of 2017. As the matter is being transferred to Family Court, the appearance of the respondent/husband is dispensed with till the commencement of the trial.

7. Accordingly, the Transfer Civil Miscellaneous petitions are disposed of and H.M.O.P.No.123 of 2017, pending on the file

of Subordinate Court, Tambaram, shall stand withdrawn and transferred to the file of Family Court, Salem, to be tried along with F.C.O.P.No.34 of 2017. The learned Family Court Judge, Salem is directed to dispose of H.M.O.P.No.123 of 2017 and F.C.O.P.No.34 of 2017 as expeditiously as possible. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

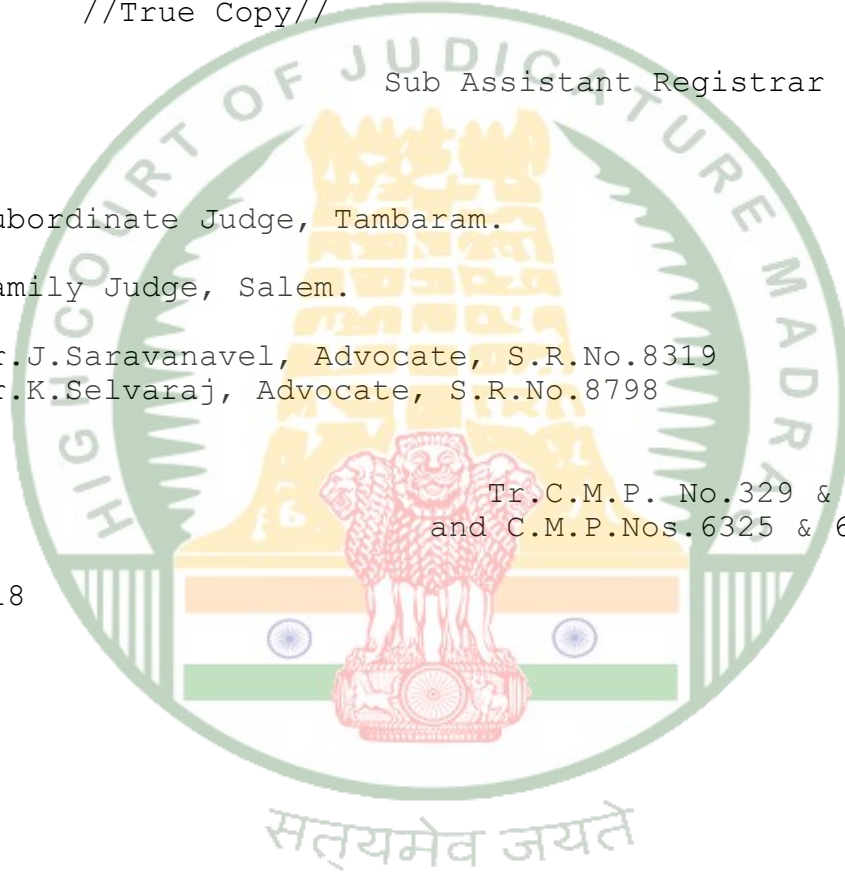
rsi
To

1. The Subordinate Judge, Tambaram.
2. The Family Judge, Salem.

+1cc to Mr.J.Saravanavel, Advocate, S.R.No.8319
+1cc to Mr.K.Selvaraj, Advocate, S.R.No.8798

Tr.C.M.P. No.329 & 354 of 2017
and C.M.P.Nos.6325 & 6988 of 2017

CS/27/02/18



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