

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2018

CORAM :

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

Tr.C.M.P. No.452 of 2017

and C.M.P.No.9247 of 2017

V.Kamatchi Petitioner/Respondent
Vs.

P.Ganesh Respondent/Petitioner

Prayer:- Petition has been filed under Section 24 of C.P.C., to withdraw the F.C.O.P.No.180 of 2016 on the file of the learned Family Court, Chengalpattu, Kancheepuram District and transfer the same to the Sub Court, Kancheepuram to try along with H.M.O.P.No.43 of 2017 on the file of the Sub Court, Kancheepuram and decide the same on merits.

For Petitioner : Mr.K.Dilith Kumar

For Respondent : served - No appearance

O R D E R

The petitioner/wife has filed this transfer Civil Miscellaneous Petition seeking to withdraw F.C.O.P.No.180 of 2016, pending on the file of Family Court, Chengalpet and transfer the same to the file of Sub Court, Kancheepuram to be tried along with H.M.O.P.No.43 of 2017.

2. The respondent/husband has filed F.C.O.P.No.180 of 2016 under Section 13(1) (i) (a) of the Hindu Marriage Act, before the Family Judge, Chengalpet for dissolution of marriage held between the petitioner and the respondent on 16.02.2011. The petitioner/wife has also filed H.M.O.P.No.43 of 2017 under Section 9 of the Hindu Marriage Act, before the Sub Judge, Kancheepuram for restitution of conjugal rights.

3. In paragraph 10 of the affidavit filed in support of the petition, the wife has expressed her difficulty in travelling from Kancheepuram to Chengalpet, which is almost 80 kms (up and down), as she is working as a police constable with Tamil Nadu Police and now posted in the Office of the

Superintendent of Police at Kancheepuram, besides she is also having 3 1/2 years old child. Hence, she sought for transfer.

4. Heard the learned counsel for the petitioner and the learned counsel. Though the respondent is served with notice and his name is printed in the cause list, there is no representation for him either in person or through counsel.

5. The respondent/husband has filed the petition for divorce before the Family Court, Chengalpet and if it is transferred to Sub Court, Kancheepuram, it will not be prejudicial to the respondent-husband, the presence of the parties is not mandatory before the Sub Court and the husband can appear through the counsel till the commencement of the trial.

6. Considering the averments made in the affidavit filed in support of the petition and taking into account Section 19(iii-a) of the Hindu Marriage Act, which gives preference for the wife in respect of the place where she resides and also there will be a conflict in decisions, if the above said O.Ps. are tried in two different places, this Court feels it appropriate to transfer F.C.O.P.No.180 of 2016 on the file of Family Court, Chengalpet to the file of Sub Court, Kancheepuram, to be heard along with H.M.O.P.No.43 of 2017.

7. Accordingly, the Transfer Civil Miscellaneous Petition is allowed and F.C.O.P.No.180 of 2016 pending on the file of Family Court, Chengalpet shall stand withdrawn and transferred the same to the file of Sub Court, Kancheepuram, to be tried along with H.M.O.P.No.43 of 2017. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

srn

To

1. The Judge, Family Court, Chengalpet

2. The Sub Judge, Kancheepuram

+1cc to Mr.K.DILLI KUMAR, Advocate, S.R.No. 2706

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PVS (CO)

TR(07/02/2018)