

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 02.01.2018
CORAM :
THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA
Tr.C.M.P. No.882 of 2017
and C.M.P.No.17798 of 2017

V. Lavanya

... Petitioner

versus

N. Sivaprakash

... Respondent

Prayer:- The Petition is filed under Section 24 of C.P.C. praying to transfer the petition in H.M.O.P.No.65 of 2017 on the file of the Sub Court, Devakottai and transfer the same to the Family Court at Coimbatore.

For Petitioner : Mr.J.Kingsly Solomon

For Respondent : No appearance

O R D E R

The petitioner/wife has filed this transfer Civil Miscellaneous Petition seeking to withdraw H.M.O.P.No.65 of 2017, pending on the file of Subordinate Court, Devakottai and transfer the same to the file of Family Court, Coimbatore.

2. The respondent/husband has filed H.M.O.P.No.65 of 2017 under Section 13(1) (i-a) (i-b) of the Hindu Marriage Act, before the Sub Judge, Devakottai for dissolution of marriage solemnized between the petitioner and the respondent on 11.05.2014. The petitioner/wife has filed H.M.O.P.No.1009 of 2017 under Section 9 of the Hindu Marriage Act, before the Family Court, Coimbatore for restitution of conjugal rights.

3. It is stated in the affidavit filed in support of the petition that the petitioner/wife is living with her parents along with her children. She expressed her difficulty to travel to Devakottai with her 4 months baby for each hearing. Hence, the petitioner seeks for the above transfer.

4. Heard the learned counsel for the petitioner. The notice sent to the respondent returned with endorsement 'unclaimed'. Hence, name of the respondent is printed in the cause list. Even then, there is no representation for the respondent either in person or through counsel.

5. As the O.P. filed by the respondent/husband is for divorce and the O.P. filed by the petitioner/wife is for restitution of conjugal rights, in order to avoid any conflict in decision, it would be appropriate to direct joint trial of both the cases.

6. Considering Section 19(iii-a) of the Hindu Marriage Act, which gives preference for the wife in respect of the place where she resides, this Court is inclined to transfer H.M.O.P.No.65 of 2017, pending on the file of Subordinate Court, Devakottai to the file of Family Court, Coimbatore, to be heard along with H.M.O.P.No.1009 of 2017.

7. Accordingly, the Transfer Civil Miscellaneous Petition is allowed and H.M.O.P.No.65 of 2017, pending on the file of Subordinate Court, Devakottai shall stand withdrawn and transferred to the file of Family Court, Coimbatore, to be tried along with H.M.O.P.No.1009 of 2017, which is already pending. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge,
Devakottai.
2. The Family Judge,
Coimbatore.

+1 cc to Mr.J.Kingsly Solomon Advocate sr 98

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