

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY
TR.CIVIL MISCELLANEOUS PETITION NO.200 OF 2017

ORDER:

This Transfer Civil Miscellaneous Petition, under Section 24 of Code of Civil Procedure 1908, is filed to withdraw F.C.O.P.No.3 of 2017 pending on the file of the Senior Civil Judge, Nandikotkur and transfer the same to the file of the Judge, Family Court, Visakhapatnam to try along with FCOP No.1062 of 2015 filed for restitution of conjugal rights.

The petitioner is the wife and the respondent is husband. Wife filed petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights in the year 2015 and the husband filed petition under Section 13(1a)(ib) and (ii) of the Hindu Marriage Act for decree of divorce in the year 2017 at Nandikotkur based on the cause of action. The difficulty expressed by the petitioner is to undertake journey from Visakhapatnam to Nandikotkur and possibility of conflicting judgments in the event of two petitions are enquired, disposed of by two different Courts, to avoid such conflicting decision, it is appropriate to decide both petitions by one Court.

The petition pending before the Judge, Family Court cannot be withdrawn and transferred to the Senior Civil Judge as Family Court is presided by an Officer in the cadre of District Judge. Therefore, to avoid conflicting decisions, I deem it appropriate to withdraw O.P.No.3 of 2017 from the file of Senior Civil Judge, Nandikotkur to the file of the Judge, Family Court, Visakhapatnam. The Judge, Family Court, Visakhapatnam is requested not to insist the personal appearance of respondent on every date of adjournment except for reconciliation and for recording cross examination or on any date whenever, the respondent is directed to appear before the Court.

The request of the petitioner to club O.P.No.3 of 2017 along with FCOP No.1062 of 2015 cannot be ordered in view of the limited jurisdiction under Section 24(2) C.P.C. However, it is left open to the Court below whether or not to try both the petitions together in view of the principle laid down in ***Dronavajjula Vidyamba Vs. Vallabhajosyula Lakshmi Venkayamma***¹.

With the above direction, the transfer civil miscellaneous petition is disposed of. O.P.No.3 of 2017 pending on the file of Senior Civil Judge, Nandikotkur is withdrawn and transferred to the file of Judge, Family Court, Visakhapatnam. The Judge, Family Court, Visakhapatnam is directed to dispose of the petition in accordance with law. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this petition shall stand closed.



M. SATYANARAYANA MURTHY, J

08.11.2018

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¹ AIR 1958 AP 218