

HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

TRANSFER C.M.Ps.No.452 and 560 of 2018

COMMON ORDER:

Tr.C.M.P.No.452 of 2018:

This petition is filed under Section 24 C.P.C., to withdraw F.C.O.P.No.1430 of 2017 from the file of the Judge, Family Court, Visakhapatnam, and transfer the same to the Court of Senior Civil Judge, Bobbili, to try along with H.M.O.P.No.28 of 2017.

Tr.C.M.P.No.560 of 2018:

This petition is filed under Section 24 CPC to withdraw H.M.O.P.No.28 of 2017 from the file of the Court of Senior Civil Judge, Bobbili, Vizianagaram District, and transfer the same to the Family Court, Visakhapatnam.

3. Since the above two transfer petitions are filed by wife and husband against each other, this Court is inclined to dispose of the same by passing common order in these two petitions.

4. Heard the learned counsel appearing for both the parties.

5. A perusal of the record reveals that the marriage between the parties took place on 26.08.2013 as per Hindu rites and caste customs. For one reason or the other, disputes arose between the parties, therefore, both are residing separately. While the things stood thus, the wife filed H.M.O.P.No.28 of 2017 on the file of the Court of Senior Civil Judge, Bobbili, against the husband under Section 13(1)(1a)(1b) of Hindu

Marriage Act for dissolution of marriage between them. The husband filed F.C.O.P.No.1430 of 2017 on the file of the Family Court, Visakhapatnam, against the wife for restitution of conjugal rights under Section 9 of the Hindu Marriage Act.

6. Both the counsel are not admitting about the place of marriage and other relevant aspects. If this Court expresses any opinion on those aspects, it may cause prejudice to one of the parties to the proceedings. The relief sought under Section 13 of the Hindu Marriage Act is wider than the relief sought under Section 9 of the Hindu Marriage Act. Transfer C.M.P.No.452 of 2018 is filed by the wife seeking transfer of F.C.O.P.No.1430 of 2017 from the file of the Family Court, Visakhapatnam to the Court of Senior Civil Judge, Bobbili. If both Courts are allowed to pass orders separately, it may lead to conflicting judgments. It is not in dispute that H.M.O.P.No.28 of 2017 is filed much prior to the date of filing of F.C.O.P.No.1430 of 2017. Taking into consideration the facts and circumstances of both the cases, this Court is of the considered view that it is a fit case to transfer F.C.O.P.No.1430 of 2017.

7. At the time of arguments, learned counsel for the petitioner in Tr.C.M.P.No.560 of 2018 (husband) submitted that the presence of the husband may be dispensed with in F.C.O.P.No.1430 of 2017 and H.M.O.P.No.28 of 2017 on the file of the Court of Senior Civil Judge, Bobbili on each and every date of adjournment. Even if the presence of the husband is dispensed with, no prejudice would be caused to the wife.

8. Accordingly, transfer C.M.P.No.452 of 2018 is allowed. F.C.O.P.No.1430 of 2017 is withdrawn from the file of the Family Court, Visakhapatnam and transferred to the Court of Senior Civil Judge, Bobbili, to try along with H.M.O.P.No.28 of 2017. Consequently, Transfer C.M.P.No.560 of 2018 is dismissed. The presence of the petitioner(husband) in Tr.C.M.P.No.560 of 2018 is dispensed with in F.C.O.P.No.1430 of 2017 and H.M.O.P.No.28 of 2017 on the file of the Court of Senior Civil Judge, Bobbili on each and every date of adjournment. However, he shall appear before the Court of Senior Civil Judge, Bobbili, in connection with F.C.O.P.No.1430 of 2017 and H.M.O.P.No.28 of 2017, as and when his presence is so required. As a sequel, miscellaneous petitions, pending if any shall stand closed.

Dt:31.08.2018
Rns

T.SUNIL CHOWDARY, J

