

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.06.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

Tr. C.M.P. No.79 of 2018
and C.M.P. No.2302 of 2018

M.Shanmugavalli

... Petitioner

-vs-

S.Mariappan

... Respondent

Prayer: Petition filed under Section 24 of C.P.C to withdraw and transfer the H.M.O.P. No.178 of 2017 on the file of the Subordinate Court, Devakottai to the II Additional Family Court at Chennai for joint trial along with the O.P. No.180 of 2018 on the file of the II Additional Family Court at Chennai.

For Petitioner : Mr.S.Hemanand

For Respondent : No appearance

O R D E R

The Transfer C.M.P. has been filed by M.Shanmugavalli, the petitioner herein to transfer the H.M.O.P. No.178 of 2017 pending on the file of the Sub Court, Devakottai to the file of the II Additional Family Court at Chennai, to be tried along with O.P. No.180 of 2018 pending on the file of the II Additional Family Court at Chennai.

2.Learned counsel appearing for the petitioner would submit that the marriage between the petitioner and the respondent was solemnised on 02.03.2006 at Vadapalani Murugan Temple, Vadapalani, Chennai and due to difference of opinion arose between themselves, the respondent left the matrimonial home. In order to harass the petitioner, the respondent has filed the divorce petition under Section 13 (1) (ia) (ib) of the Hindu Marriage Act in H.M.O.P. No.178 of 2017 on the file of the Sub Court, Devakottai, alleging the cruelty done by the petitioner herein and disagreeing the same, the petitioner has filed the O.P. No.180 of 2018 on the file of the II Additional Family Court at Chennai. Learned counsel appearing for the petitioner would further submit that the petitioner, who is a physically challenged person with 80% disability, is unable to travel long

distances and therefore, if the H.M.O.P. No.178 of 2017 is transferred to the file of the II Additional Family Court at Chennai, no prejudice will be caused to the respondent.

3.Learned counsel for the petitioner would further submit that he had taken notice to the respondent on the address mentioned in the H.M.O.P.No.178 of 2017, however it has been returned with an endorsement 'parties left'. Whereas, the parents are residing in the same address. However, with the leave of the Court, fresh notice was directed to be served on the learned counsel appeared on behalf of the respondent before the Sub Court, Devakottai. Affidavit of service has also been to that effect. In the meanwhile, the II Additional Family Court at Chennai, has proceeded exparte against the respondent which shows that the respondent is not willing to take part in any of the proceedings either before the II Additional Family Court at Chennai or before this Court.

4.Taking note of the fact that the petition in O.P. No.180 of 2018 seeking for restitution of conjugal rights, filed by the petitioner was pending before the II Additional Family Court at Chennai and although service is completed, no one appeared on behalf of the respondent, which shows that the respondent has no objection in allowing the petition and also considering the fact that the petitioner is physically challenged, this Court is inclined to transfer the H.M.O.P. No.178 of 2017 pending before the Sub Court, Devakottai to the file of the II Additional Family Court at Chennai.

5.Accordingly, the Tr. C.M.P. is allowed and the H.M.O.P. No.178 of 2017 pending on the file of the Sub Court, Devakottai is withdrawn and transferred to the file of the II Additional Family Court at Chennai to be tried along with O.P. No.180 of 2018.

6.The II Additional Family Court, Chennai is directed to take up the cases jointly and dispose of the same expeditiously in the manner known to law. No costs. Consequently, C.M.P. No.2302 of 2018 is closed.

Sd/-
Assistant Registrar (Insp.Cell)

//True Copy//

Sub Assistant Registrar

vga

To

1.The Judge,
The II Additional Family Court, Chennai.

2.The Subordinate Judge,
The Sub Court, Devakottai.

+1 cc to Mr.N.Sivakumar, Advocate, S.R.No.47404

Tr. C.M.P. No.79 of 2018
and C.M.P. No.2302 of 2018

SSD(CO)
SSM(16/07/2019).



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