

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.08.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

Tr. C.M.P. Nos.877 of 2018 & 605 of 2019
and C.M.P. No.21584 of 2018

Ammukutty

... Petitioner in Tr.C.M.P. No.
877 of 2018 and respondent in
Tr.C.M.P. No.605 of 2019

-vs-

Elangovan

... Respondent in Tr.C.M.P.
No.877 of 2018 and petitioner
in Tr.C.M.P. No.605 of 2019

Prayer in Tr.C.M.P. No.877 of 2018: Petition filed under Section 24 of C.P.C to withdraw the H.M.O.P. No.109 of 2018 pending on the file of Principal Sub Court, Thindivanam and transfer the same to the Family Court, Chennai.

Prayer in Tr.C.M.P. No.605 of 2019: Petition filed under Section 24 of C.P.C to withdraw the proceedings in O.P. No.2732 of 2019 on the file of the IV Additional Family Court at Chennai and transfer the same to the file of Sub Court, Tindivanam, Villupuram District to be tried along with O.P. No.109 of 2018 pending on the file of Sub Court at Tindivanam, Villupuram District.

For Petitioner in
Tr.C.M.P. No.877 of 2018 &
respondent in
Tr.C.M.P. No.605 of 2019 : Mr.K.C.Karl Marx

For Respondent in
Tr.C.M.P. No.877 of 2018 &
Petitioner in
Tr.C.M.P. No.605 of 2019 : Mr.K.G.Senthilkumar

COMMON ORDER

Transfer C.M.P. No.877 of 2018 has been filed to withdraw and transfer the H.M.O.P. No.109 of 2018 pending on the file of the Principal Sub Court, Thindivanam to the file of the Family Court, Chennai.

Transfer C.M.P. No.605 of 2019 has been filed to withdraw the proceedings in O.P. No.2732 of 2019 on the file of the IV Additional Family Court at Chennai and transfer the same to the file of Sub Court, Tindivanam, Villupuram District to be tried along with H.M.O.P. No.109 of 2018 pending on the file of the Sub Court at Tindivanam, Villupuram District.

2.For the sake of convenience Ammukutty, the petitioner in Tr.C.M.P. No.877 of 2018 & respondent in Tr.C.M.P. No.605 of 2019 and Elangovan, the respondent in Tr.C.M.P. No.877 of 2018 & petitioner in Tr.C.M.P. No.605 of 2019 are referred to as petitioner/ wife and respondent/husband respectively as stated in Tr.C.M.P. No.877 of 2018.

3.Learned counsel appearing for the petitioner/wife would submit that the marriage between the petitioner/wife and the respondent/ husband took place on 28.09.2012 as per Hindu rites and customs at Mylam Vinayagar Temple, Thindivanam, Villupuram District and out of wedlock, they were blessed with two children namely, Dhashwin and Yuvani on 17.01.2013 and 27.10.2014 respectively and unfortunately, the female child Yuvani passed away. Due to difference of opinion arose between themselves, the respondent/husband filed a petition in H.M.O.P. No.109 of 2018 seeking divorce under Section 13(1)(i), (ia) and (ib) of the Hindu Marriage Act, 1955 before the Principal Sub Court, Thindivanam making frivolous allegations against the petitioner/wife, who has filed a petition in O.P. No.2732 of 2019 seeking restitution of conjugal rights under Section 9 of the Hindu Marriage Act 1955 before the IV Additional Family Court, Chennai. Now the respondent/husband has contracted second marriage with the own sister of the petitioner/wife namely, Vaitheeswari, for which, the parents of the petitioner/wife have also given a complaint on 01.07.2019 to take action. Therefore, if the H.M.O.P. No.109 of 2018 pending on the file of the Principal Sub Court, Thindivanam is transferred to the file of the Family Court, Chennai, no prejudice would be caused to the respondent/husband.

4.Learned counsel appearing for the respondent/husband, opposing the prayer for transfer made by the petitioner/wife, would submit that the respondent/husband is presently working at Armed Reserve Police at Villupuram Police Petallion and therefore, he was not allowed to stay outside the unit. As the distance between Tindivanam and Villupuram is more than 90 k.ms., the respondent/husband could not appear before the Family Court at Chennai for each and every hearing. Learned counsel appearing for the respondent/husband would further submit that it will be easier for the respondent/husband as well as the

petitioner/wife to contest the case before the Sub Court, Tindivanam because except important hearings, personal appearance of both the parties are not necessary. Therefore, the O.P. No.2732 of 2019 filed by the petitioner/wife for restitution of conjugal rights could be transferred.

5.Taking note of the fact that the petitioner has to travel long distance along with her minor child, this Court is inclined to transfer the H.M.O.P. No.109 of 2018 pending before the Principal Sub Court, Tindivanam to the file of the Family Court, Chennai. Accordingly, Tr. C.M.P. No.877 of 2018 is allowed and the H.M.O.P. No.109 of 2018 pending on the file of the Principal Sub Court, Tindivanam is withdrawn and transferred to the file of the Family Court, Chennai.

6.Finding no merit in the Tr.C.M.P. No.605 of 2019 filed by the respondent, this Court is inclined to dismiss the same. Accordingly. Tr.C.M.P. No.605 of 2019 is dismissed.

7.The learned Family Judge, Chennai is directed to take up the cases and dispose of the same expeditiously in the manner known to law. No costs. Consequently, C.M.P. No.21584 of 2018 is closed.

vga

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Principal Subordinate Court,
Thindivanam.

2.The Judge,
Family Court, Chennai.

3. The IV Addl.Family Court,
Chennai.

+1cc to Mr.M.C.Karl Marx, Advocate, SR.No.73168

+1cc to Mr.K.G.Senthil Kumar, Advocate, SR.No.73981

Tr. C.M.P. Nos.877 of 2018 & 605 of 2019
and C.M.P. No.21584 of 2018

Kak(15/10/2019)