

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.07.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

Tr. C.M.P. Nos.958 of 2018 & 504 of 2019
and
C.M.P. Nos.23598 of 2018 & 14038 of 2019

R.Amalraj

... Petitioner in Tr.C.M.P.
No.958 of 2018 and
respondent in
Tr.C.M.P. No.504 of 2019

-Vs-

Sudarvizi

... Respondent in Tr.C.M.P.
No.958 of 2018 and petitioner
in Tr.C.M.P. No.504 of 2019

Prayer in Tr.C.M.P. No.958 of 2018: Petition filed under Section 24 of C.P.C to withdraw the H.M.O.P. No.3495 of 2018 from the file of 1st Additional Family Court, Chennai and transfer the same to the file of Sub Court, Cheyyar.

Prayer in Tr.C.M.P. No.504 of 2018: Petition filed under Section 24 of C.P.C to withdraw the H.M.O.P. No.34 of 2018 on the file of the Subordinate Court at Cheyyar and consequently transfer the same to the file of the I Additional Family Court at Chennai to be tried along with H.M.O.P. No.3495 of 2018 pending there.

For Petitioner in
Tr.C.M.P. No.958 of 2018 &
respondent in
Tr.C.M.P. No.504 of 2019 : Mr.S.Sai Shankar

For Respondent in
Tr.C.M.P. No.958 of 2018 &
Petitioner in
Tr.C.M.P. No.504 of 2019 : Ms.Manjula Charan

COMMON ORDER

The Transfer C.M.Ps. have been filed to withdraw and transfer the H.M.O.P. No.3495 of 2018 pending on the file of the I Additional Family Court, Chennai to the file of the Sub Court, Cheyyar and to withdraw and transfer the H.M.O.P. No.34 of 2018 pending on the file of the Sub Court, Cheyyar to the file of the I Additional Family Court, Chennai to be tried along with H.M.O.P. No.3495 of 2018.

2.For the sake of convenience R.Amalraj, the petitioner in Tr.C.M.P. No.958 of 2018 & respondent in Tr.C.M.P. No.504 of 2019 and Sudarvizi, the respondent in Tr.C.M.P. No.958 of 2018 & petitioner in Tr.C.M.P. No.504 of 2019 are referred to as petitioner/husband and respondent/wife respectively as stated in Tr.C.M.P. No.958 of 2018.

3.It is seen that the marriage between both of them took place on 06.07.20016 as per Hindu rites and customs in Singavaram Village, Senji Taluk, Vizupuram Taluk. Due to difference of opinion arose between themselves, the respondent/wife left the matrimonial home, only after living for a period of 15 days. Therefore, the petitioner/ husband filed the H.M.O.P. No.48 of 2017 for restitution of conjugal rights under Section 9 of the Hindu Marriage Act on the file of the Sub Court, Cheyyar. According to the petitioner/husband, since the respondent/wife has gone to the extent of giving false complaints against him, he withdrew the said H.M.O.P. No.48 of 2017 and filed the H.M.O.P. No.34 of 2018 on the file of the Sub Court, Cheyyar seeking divorce. Whereas the respondent/wife filed the H.M.O.P. No.3495 of 2018 seeking restitution of conjugal rights before the I Additional Family Court, Chennai under Section 9 of the Hindu Marriage Act.

4.Learned counsel appearing for the petitioner/husband, opposing the prayer for transfer made by the respondent/wife, drawing the notice of this Court to an earlier order dated 26.07.2018 passed in Tr.C.M.P. No.487 of 2018 filed by the wife, would submit that this Court, finding no merits in the earlier Tr.C.M.P. No.487 of 2018 directed the learned Sub Judge, Cheyyar to dispose of the H.M.O.P. No.34 of 2018 as expeditiously as possible, in any event, not later than six months from the date of receipt of the copy of the order.

5.Learned counsel appearing for the petitioner/husband would submit that the respondent/wife is bound to come and conduct the case filed by the petitioner/husband before the Sub Court, Cheyyar so that both the petitions can be tried together

and the valuable time of the Court has also been utilised for some other cases.

6. In the earlier hearing, on the submission made by the learned counsel appearing for the petitioner/husband that the wife has given a wrong address claiming that she is residing at Door No.23/24, Venkatachala Naicken Street, Triplicane, Chennai-600 005, this Court, by order dated 17.07.2019, has appointed one Ms.Rajeswari Karthikeyan, learned counsel as Advocate Commissioner to find out whether the address given by the respondent/wife is genuine or not and to report to this Court.

7. Today the learned Advocate Commissioner, who is present before this Court, by filing a report dated 19.07.2019, would submit that she is not residing at Door No.23/24, Venkatachala Naicken Street, Triplicane, Chennai-600 005.

8. The submissions made by the learned counsel appearing for the petitioner/husband and the Advocate Commissioner are refuted by the learned counsel appearing for the respondent/wife.

9. When this Court has already passed an order directing the learned Sub Judge, Cheyyar to dispose of the H.M.O.P. No.34 of 2018 filed for divorce in the Tr.C.M.P. No.487 of 2018 filed by the wife, she cannot again come to this Court seeking transfer of the same matter as it is hit by the principles of res judicata. When this Court posed a query to the respondent wife, who is present before this Court along with her father and learned counsel that as to why she has given such a wrong address stating that she is presently residing at Door No.23/24, Venkatachala Naicken Street, Triplicane, Chennai-600 005, she is unable to give any acceptable explanation that shows that the arguments advanced by the learned counsel appearing for the petitioner/husband that the respondent/wife, after an order was passed by this Court in Tr.C.M.P. No.487 of 2018 directing the learned Sub Judge, Cheyyar to dispose of the case expeditiously, has come to this Court with a wrong address, is supported by the report submitted by the Advocate Commissioner.

10. Taking note of the fact that the respondent/wife has come to this Court with uncleaned hands in the Tr.C.M.P. No.504 of 2019 by way of stating wrong address which is unacceptable and untenable, this Court is inclined to dismiss the petition filed by the respondent/ wife. Accordingly, the Tr.C.M.P. No.504 of 2019 filed by the respondent/wife is dismissed and the Tr.C.M.P. No.958 of 2018 filed by the petitioner/husband is allowed and the H.M.O.P. No.3495 of 2018 pending on the file of the I Additional Family Court, Chennai is withdrawn and transferred to the file of the learned Sub Judge, Cheyyar, who

is directed to take up both the cases and dispose of the same expeditiously in the manner known to law. No costs. Consequently, C.M.P. Nos.23598 of 2018 & 14038 of 2019 are closed.

11.For giving incorrect address, Rs.10,000/- towards costs is imposed on the respondent/wife and the same should be payable by her to the learned Advocate Commissioner.

vga

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

2.The Subordinate Judge,
Cheyyar.

Copy to:-

Ms.A.Rajeswari Karthikeyan,
No.9/43, Karpagam Avenue,
1st Street, R.A.Puram,
Chennai - 28.

+1cc to M/s.Manjula Chandran, Advocate, SR.No.62130

+1cc to M/s.Rajeswari Karthikeyan, Advocate, SR.No61686

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C.M.P. Nos.23598 of 2018 & 14038 of 2019

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