



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2019

CORAM

WEB COPY

THE HONOURABLE **MS.JUSTICE P.T.ASHA**

TR.C.M.P. (MD)No.409 of 2019
and
C.M.P. (MD)No.9513 of 2019

Gino Metilda ... Petitioner/Respondent
Vs.
Jebastin ... Respondent/Petitioner

PRAYER:- Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., to withdraw the divorce petition in I.D.O.P.No.3642 of 2019 on the file of the Family Court, Chennai and transfer the same to the file of the Family Court, Tirunelveli.

For Petitioner : Mr.R.Karunanidhi

For Respondent : No Appearance

ORDER

The above Transfer Civil Miscellaneous Petition has been filed seeking transfer of the case in I.D.O.P.No.3642 of 2019 from the file of the Family Court, Chennai to the file of Family Court, Tirunelveli.

2.It is brought to notice of this Court that the respondent had earlier filed a petition in D.O.P.No.35 of 2016 for the very same relief, namely divorce on the file of the Family Court, Tirunelveli. The Family Court, by judgment and decree, dated 25.05.2016 was pleased to pass an order of judicial separation. The Court had passed an order taking into consideration the interests of the minor daughters. Challenging the said judgment, the respondent herein has filed an appeal in C.M.A.(MD)No.1003 of 2016 before this Court. While the appeal was pending, the respondent come forward to file yet another petition in I.D.O.P.No.3642 of 2019 on the file of the Family Court, Chennai. The wife has taken out an application for transferring the said divorce petition.

3.Considering the fact that earlier divorce petition filed by the respondent, has been dismissed and during the pendency of the appeal, the respondent has come forward to file the second petition for divorce, the same is clearly barred by *res judicata*.



4.Further this Court has also confirmed the judgment and decree of the Family Court, Tirunelveli, in D.O.P.No.35 of 2016. In view of the above, I.D.O.P.No.3642 of 2019 on the file of the Family Court, Chennai is transferred to the file of Family Court, Tirunelveli and the learned Family Judge, Tirunelveli is directed to take up the issue of the maintainability of the second petition for divorce while the earlier petition was pending which is subsequently dismissed. This exercise shall be completed within a period of one month from the date of receipt of a copy of this order. The transfer civil miscellaneous petition is disposed of, on the above lines. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

Sub Assistant Registrar(CS)

gns

To

- 1.The Judge,Family Court, Chennai.
- 2.The Judge,Family Court, Tirunelveli.

+1 CC to M/s.M.KARUNANITHI, Advocate (SR-98782[F] dated 15/11/2019)

+1 CC to M/s.R.KARUNANIDHI, Advocate (SR-99170[F] dated 18/11/2019)

TR.C.M.P. (MD)No.409 of 2019
15.11.2019

KK/SAR/19.12.2019/2P-5C/