

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

Tr.C.M.P.No.161 of 2020

Muthusamy

... Petitioner

Versus

Rukkumani

... Respondent

Prayer: Petition has been filed under Section 24 of the Civil Procedure Code praying to withdraw H.M.O.P.No.06 of 2018 pending on the file of learned Sub-Court, Perundurai, and to transfer the same to the file of learned Sub-Court, Tiruchengode, to try along with H.M.O.P.No.108 of 2013 for a joint trial.

For Petitioner : Mr.N.Manoharan

For Respondent : No Appearance

O R D E R

Heard the parties through Video Conferencing due to COVID-19 pandemic.

2. Mr.Muthusamy/petitioner herein, who is the husband of Mrs.Rukkmani/respondent herein, has filed this Transfer Civil Miscellaneous Petition seeking to transfer H.M.O.P.No.06 of 2018 from the file of learned Sub-Court, Perundurai, to the file of learned Sub-Court, Tiruchengode, to try along with H.M.O.P.No.108 of 2013 filed by him seeking for divorce on the ground of desertion and cruelty. The above said H.M.O.P.No.06 of 2018 was filed by the respondent/wife seeking for restitution of conjugal rights.

3. Learned counsel for the petitioner/husband submitted that initially, the petitioner/husband, who is a retired Government servant, had divorced one Thayammal mutually in the year 2000. After the divorce, the petitioner/husband, who is aged about 76 years, had married the respondent/wife, aged about 45 years, who was also a divorcee, on 03.07.2000, and the age difference between the petitioner and the respondent is about 30 years. It is alleged that the respondent/wife used to pickup frequent

quarrel with him and often she used to leave matrimonial home on her own accord. He is a diabetic patient and also suffering from blood pressure. In view of such humiliation, he filed H.M.O.P.No.23 of 2009 on the file of learned Sub-Court, Tiruchengode, seeking for divorce, on the ground of desertion and cruelty. After the period of six months, a settlement was arrived at between both parties at the instance of elders and well-wishers of both family and therefore, he withdrew the above said HMOP and thereafter, they were living together and with consent, they adopted a child by name Hariharan in the year 2009.

4. It is further submitted that in the year 2012, again, she eloped with the petitioner's driver Mr.Suresh and thereafter, the petitioner removed his driver from the employment. Subsequently, in order to wreck vengeance, the respondent/wife and her family members came to the house and attacked the petitioner/husband. Therefore, he gave a complaint in C.S.R.No.253/2013 on the file of Tiruchengode Rural Police Station. After the enquiry, the complaint was closed on the compromise that the parties had to workout their remedy before the competent Civil Court. Accordingly, the petitioner/husband has filed H.M.O.P.No.108 of 2013 on the file of learned Sub-Court, Tiruchengode, seeking for divorce, on the ground of desertion and cruelty. In the said proceedings, the respondent/wife entered appearance and filed a counter affidavit. When the matter was set for trial, after about 5 years, the respondent/wife has filed H.M.O.P.No.6 of 2018 on the file of learned Sub-Court, Perundurai, seeking for restitution of conjugal rights, with a view to prolong the trial so as to avoid the disposal of H.M.O.P.No.108 of 2013 filed by the petitioner/husband.

5. Learned counsel for the petitioner/husband further argued that the respondent/wife has not even taken steps to come back to the matrimonial home for about 14 years and therefore, filing of H.M.O.P.No.6 of 2018 after a delay of 5 years from the date of filing of H.M.O.P.No.108 of 2013 by the husband clearly shows that it is only an afterthought. Secondly, it is found that she is living with one driver, therefore, the question of seeking a prayer for restitution of conjugal rights would not arise and it is only a frivolous petition filed by the respondent/wife. With these submissions, learned counsel prayed for transferring the case filed by the wife to the file of learned Sub-Court, Tiruchengode, to try along with H.M.O.P.No.108 of 2013 filed by the husband, for joint trial.

6. Although Court notice is served on the respondent/wife, no one represented the case on behalf of her, that shows that she has no objection in transferring the case to the file of

learned Sub-Court, Tiruchengode. Secondly, when the petitioner/husband has already filed H.M.O.P.No.108 of 2013 seeking for divorce on the ground of desertion and cruelty, filing of H.M.O.P.No.6 of 2018 by the wife after a period of 5 years shows that she was not showing her readiness and willingness for reunion. Thirdly, the petitioner/husband, aged about 76 years now, is taking care of his adopted son and he is studying in a School at Tiruchengode and it is also stated that the respondent/wife is not interested to see the child. Fourthly, the respondent/wife is aged about 45 years and therefore, she can undertake long travel, whereas it will be difficult for the petitioner/husband, who is aged about 76 years, to undertake long journey from Tiruchengode to Perundurai, which is more than 80 kms., to attend each and every hearing. Thus, considering the balance of convenience in favour of the petitioner/husband, H.M.O.P.No.6 of 2018 filed by the wife is withdrawn from the file of learned Sub-Court, Perundurai, consequently, transferred to the file of learned Sub-Court, Tiruchengode, to try along with H.M.O.P.No.108 of 2013 filed by the husband, for joint trial. On such transfer, learned Sub-Court, Tiruchengode, shall dispose of both the cases together in the manner known to law as expeditiously as possible. With the above direction, this Transfer Civil Miscellaneous Petition is allowed. Consequently, connected CMP.No.5350 of 2020 is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Court,
Perundurai.

2.The Subordinate Court,
Tiruchengode.

+1cc to M/s.N.Manokaran, Advocate Sr.25223

Tr.C.M.P.No.161 of 2020

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srg 03/08/2020