

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2020

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THE HONOURABLE MR.JUSTICE T.RAJA

Tr.C.M.P.No.113 of 2020

M.Priyadharshini

.. Petitioner/Respondent

-VS-

R.Sivaraj

.. Respondent/Petitioner

Transfer Civil Miscellaneous Petition filed under Section 24 of the Civil Procedure Code, to withdraw the H.M.O.P.No.273 of 2017 pending on the file of Hon'ble II Additional Sub Court at Coimbatore and transfer the same to the Hon'ble Sub Court, Tiruvallur to try it along with H.M.O.P.No.7 of 2019.

For Petitioner :: Mr.N.Ponraj

For Respondent :: No appearance

ORDER

Heard learned counsel for the petitioner through video conferencing due to the Covid-19 pandemic.

2. The petitioner, Mrs.M.Priyadharshini, Wife of Mr.R.Sivaraj, the respondent herein has come to this Court seeking an order to withdraw the H.M.O.P.No.273 of 2017 from the file of the II Additional Sub Court, Coimbatore and transfer the same to the file of the Sub Court, Tiruvallur to be tried along with H.M.O.P.No.7 of 2019 filed by the petitioner under Section 9 of the Hindu Marriage Act seeking restitution of conjugal rights.

3. Learned counsel appearing for the petitioner, at the outset, stated that when the address given by the respondent in the H.M.O.P.No.273 of 2017 seeking divorce is the same address given by the petitioner in this transfer civil miscellaneous petition, the respondent has been evading the receipt of notice from this Court. When this Court also gave liberty to serve the notice privately on the respondent, it was duly served

accordingly. But due to the Covid-19 pandemic, he is unable to file the affidavit of service. He also stated that he will file the affidavit during the course of the day.

4. When the service of summons and the notice issued by this Court were taken to the address given by the respondent, the respondent cannot evade the receipt of the notice.

5. Coming to the merits of the matter, learned counsel appearing for the petitioner stated that when the marriage between the petitioner and the respondent was solemnized on 8.6.2016 as per the Hindu rites and customs at Sri Nallandavar Temple in Manaparai, they were living happily. Out of the wedlock, they were also blessed with a male child, who is aged about 2 ½ years today. From the inception of marriage, the respondent and his family members started to not treat the petitioner properly. However, the petitioner tolerating all the ifs and buts that usually come up in the family life, started living with the hope that one day, the situation would improve. But the petitioner was only driven out to her parental home. After coming to the parental home, the respondent has not taken any step whatsoever to bring her back to the matrimonial home. Finally, the respondent has filed the H.M.O.P.No.273 of 2017 on various false grounds to dissolve the marriage. The petitioner, opposing the prayer for dissolution of marriage, has also filed the H.M.O.P.No.7 of 2019 under Section 9 of the Hindu Marriage Act seeking restitution of conjugal rights, which is pending on the file of the Sub Court, Tiruvallur. When the respondent is bound to appear before the Sub Court, Tiruvallur to answer the prayer in the H.M.O.P.No.7 of 2019 for restitution of conjugal rights, the H.M.O.P.No.273 of 2017 pending on the file of the II Additional Sub Court, Coimbatore should be also transferred to the Sub Court, Tiruvallur, so that both the matters can be tried together, as a result, both the parties can avoid travelling to Coimbatore.

6. This Court, taking note of the conduct of the respondent that after furnishing his address in the H.M.O.P.No.273 of 2017, when the service was sought to be effected in the said address, the respondent started evading the receipt of notice and he has also not turned up to this Court. That shows that he has no objection for allowing the transfer civil miscellaneous petition. Secondly, the petitioner has also filed the H.M.O.P.No.7 of 2019 before the Sub Court, Tiruvallur seeking restitution of conjugal rights under Section 9 of the Hindu Marriage Act. As the distance from her residence in Periyapalayam to Coimbatore is more than 500 Kms., with the small child aged about 2 ½ years, it will be very difficult to undertake a long journey. Hence, considering the balance of convenience in favour of the petitioner, the transfer civil

miscellaneous petition stands allowed and the H.M.O.P.No.273 of 2017 is withdrawn from the file of the II Additional Sub Court, Coimbatore and transferred to the file of the Sub Court, Tiruvallur for an expeditious disposal on merits along with H.M.O.P.No.7 of 2019. Consequently, C.M.P.No.3900 of 2020 is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

1. The II Additional Subordinate Judge
Coimbatore
2. The Subordinate Judge
Tiruvallur

Tr.C.M.P.No.113 of 2020

VSNI (CO)
RMP (05/10/2020)



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