

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2020

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THE HONOURABLE MR.JUSTICE T.RAJA

Tr.C.M.P.No.509 of 2020

G.Valarmathi .. Petitioner
-vs-
K.Vinoth .. Respondent

Transfer Civil Miscellaneous Petition filed under Section 24 of the Civil Procedure Code, to withdraw the case pending in M.O.P.No.342 of 2020 on the file of the Hon'ble Family Judge at Pondicherry and transfer the same to the file of the Hon'ble VII Additional Family Court, Chennai or any of the other Additional Family Courts in Chennai.

For Petitioner :: Mrs.K.Sumathi

For Respondent :: Mr.A.Venkatesan

ORDER

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

2. This transfer civil miscellaneous petition has been filed by Mrs.G.Valarmathi, Wife of Mr.K.Vinoth, the respondent herein seeking an order for withdrawal of the M.O.P.No.342 of 2020 from the file of the Family Court at Pondicherry and transfer the same to the file of the VII Additional Family Court at Chennai or any other Additional Family Courts in Chennai for appropriate disposal on merits.

3. Mrs.K.Sumathi, learned counsel appearing for the petitioner argued that after the solemnization of marriage between the parties on 4.4.2012 at Valli Thirumana Mahal, Kandamangalam as per the Hindu rites and customs in the presence of well wishers of both families, they were blessed with a male child on 29.7.2013, named as V.Sujeeth Ram, who is presently pursuing II Standard and is under the care and custody of the petitioner/mother. However, due to difference of opinion, she came out of the matrimonial home and filed the maintenance case in M.C.No.72 of 2013 under Section 125 of Cr.P.C., on 7.2.2013 before the III Additional Family Court, Chennai, which has been transferred to the file of the VII Additional Family Court,

Chennai and the same is pending. While so, on 27.2.2013, when the respondent/husband filed H.M.O.P.No.20 of 2013 before the Sub Court, Arani seeking restitution of conjugal rights, the petitioner filed Tr.C.M.P.No.563 of 2014 and the said petition was allowed by order dated 7.9.2015 by this Court withdrawing the H.M.O.P.No.20 of 2013 from the file of the Sub Court, Arani and transferring the same to the file of the III Additional Family Court, Chennai to be tried along with M.C.No.72 of 2013. Now the H.M.O.P.No.20 of 2013 has been transferred and renumbered as O.P.No.4274 of 2015 on the file of the VII Additional Family Court, Chennai and the same is pending for trial.

4. Learned counsel appearing for the petitioner, arguing further, submitted that the respondent/husband, completely misrepresenting the facts, with unclean hands, filed the M.O.P.No.342 of 2020 on the file of the Family Court at Pondicherry seeking divorce on the ground of cruelty under Section 13(1)(ia) of the Hindu Marriage Act, 1955. Drawing the notice of this Court to pages 58, 59 & 60 of the typedset of papers, she stated that the respondent has projected a wrong case as if an ex parte decree has been passed in M.O.P.No.20 of 2013 filed by him before the Sub Court, Arani seeking restitution of conjugal rights, showing the photocopy thereof dated 31.7.2013 in M.O.P.No.20 of 2013 as one of the listed documents, when the said case has been renumbered as O.P.No.4274 of 2015 and is pending before the VII Additional Family Court, Chennai, contrary to his own averment in page 58 that the said case is pending for disposal. The reason being that when this Court, by order dated 7.9.2015, allowed the prayer of the petitioner to withdraw the pending H.M.O.P.No.20 of 2013 filed for restitution of conjugal rights by the husband under Section 9 of the Hindu Marriage Act, 1955 from the file of the Sub Court, Arani and transfer the same to the file of the III Additional Family Court, Chennai to be tried along with M.C.No.72 of 2013, there was no objection made by him that an ex parte decree was already passed. While so, the respondent/husband has attempted to circumvent this Court by playing hide and seek like he has been playing hide and seek with the petitioner/wife. The conduct of the respondent evidently proves the case of the petitioner/wife that he is habituated to take advantage of everyone and has not spared even the Court. Such a bad conduct of the respondent deserves to be deprecated strongly, she argued.

5. In reply, Mr.A.Venkatesan, learned counsel appearing for the respondent/husband submitted that the respondent is ready for settlement, therefore, if a chance is given, the issue can be amicably settled out of the Court.

6. Opposing the above request, Mrs.K.Sumathi, learned counsel appearing for the petitioner argued that the petitioner, who is residing in Chennai along with her son aged about 8 years, who is also studying in II Standard, due to difference of opinion arose between the petitioner and the respondent, seeking maintenance for her and her son, filed the M.C.No.72 of 2013 under Section 125 Cr.P.C., before the III Additional Family Court, Chennai, which was transferred to the file of the VII Additional Family Court, Chennai and the same is pending. The respondent, residing at Pondicherry, taking advantage of the gap between the petitioner and the respondent, married one Saralakshmi and also got a girl child and thereafter, has filed the M.O.P.No.342 of 2020 under Section 13(1)(ia) of the Hindu Marriage Act for divorce on the file of the Family Court, Pondicherry on 1.10.2020. The said petition is not legally maintainable, as he has suppressed the pendency of the case for restitution of conjugal rights before the VII Additional Family Court, Chennai committing an offence of perjury, therefore, it will be highly not advisable for the petitioner to believe any more the respondent. Besides, the petitioner along with her son, aged about 8 years, is unable to undertake a long journey from Chennai to Pondicherry by using the public transport, which is unsafe, in view of the Covid-19 pandemic situation.

7. I also find merits on the submissions made by the learned counsel appearing for the petitioner. Inasmuch as when this Court, by order dated 7.9.2015, allowed the Tr.C.M.P.No.563 of 2014 by withdrawing the M.O.P.No.20 of 2013 filed for restitution of conjugal rights under Section 9 of the Hindu Marriage Act by the respondent/husband from the file of the Sub Court, Arani and transferring the same to the file of the III Additional Family Court, Chennai to be tried along with M.C.No.72 of 2013, the said M.O.P.No.20 of 2013 has been renumbered as O.P.No.4274 of 2015 and is now pending on the file of the VII Additional Family Court, Chennai to be tried along with M.C.No.72 of 2013. While so, it is not known on what basis it was claimed by the respondent/husband that a decree was passed in M.O.P.No.20 of 2013, because when the respondent was the party to the order dated 7.9.2015 made in Tr.C.M.P.No.563 of 2014 and the said M.O.P.No.20 of 2013 having been now renumbered as O.P.No.4274 of 2015 and is also pending alive before the VII Additional Family Court, Chennai to be tried along with M.C.No.72 of 2013, this Court, seeing the peculiar conduct of the respondent/husband, is inclined to allow the Tr.C.M.P.No.509 of 2020 by imposing costs of Rs.1,00,000/- (Rupees one lakh only) payable by the respondent to the petitioner, for two reasons. Firstly, the respondent has not only caused mental and physical cruelty to his wife, the petitioner herein, by filing repeated petitions here and there projecting a wrong case, but also has wasted the precious and valuable time of this Court.

Secondly, it will be very difficult for the petitioner to undertake a long journey from Chennai to Pondicherry along with her son. Therefore, the transfer civil miscellaneous petition stands allowed and the M.O.P.No.342 of 2020 is withdrawn from the file of the Family Court, Pondicherry and transferred to the file of the VII Additional Family Court, Chennai by imposing costs of Rs.1,00,000/- (Rupees one lakh only) payable by the respondent-K.Vinoth to the petitioner-G.Valarmathi within a period of four weeks from the date of receipt of a copy of this order. The learned VII Additional Family Court Judge, Chennai, on receipt of the case bundle in M.O.P.No.342 of 2020, is directed to ensure the compliance of the payment of costs to the petitioner and then take up the matter for disposal on merits and in accordance with law. Consequently, C.M.P.No.13099 of 2020 is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The Family Court Judge
Pondicherry
2. The VII Additional Family Court Judge
Chennai

+1cc to Mr.K.Sumathi, Advocate, S.R.No. 42740

सत्यमेव जयते

Tr.C.M.P.No.509 of 2020

CP(CO)
GN(18/01/2021)

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