

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

Tr.C.M.P.No.922 of 2019

B.Shridevy

.. Petitioner

Versus

S.Balaji Viswanathan

.. Respondent

Prayer: Petition has been filed under Section 24 of the Civil Procedure Code praying to withdraw H.M.O.P.No.116 of 2018 pending on the file of learned Family Court, Trichy, and to transfer the same to the file of learned Sub Judge, Tambaram, to try along with H.M.O.P.No.813 of 2018.

For Petitioner : Mr.E.J.Ayyappan

For Respondent : Mr.P.Chandrasekar

O R D E R

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

2. Mrs.B.Shridevy/petitioner herein, wife of Mr.S.Balaji Viswanathan/respondent herein, has filed this Transfer Civil Miscellaneous Petition seeking to transfer H.M.O.P.No.116 of 2018 from the file of learned Family Court, Trichy, to the file of learned Sub-Court, Tambaram, to try along with H.M.O.P.No.813 of 2018 filed by the wife seeking for restitution of conjugal rights. The above said HMOP No.116 of 2018 was filed by the respondent/husband seeking for divorce.

3. Learned counsel for the petitioner/wife submitted that the marriage between the petitioner and the respondent was solemnized on 14.06.2006 at Community Hall, Neyveli Township, as per Hindu Rites and Customs. Out of the said wedlock, they were blessed with two female children by name B.V.Shobana and B.V.Ranjana and they were born on 21.03.2007 and 24.11.2008 respectively. After the birth of children, the respondent/husband went to Qatar for job in the year 2009. During that time, she was residing along with her mother-in-law, who has given lot of troubles to the petitioner/wife. Therefore, she gave a police complaint before All Women Police

Station at Trichy for safety of her life and Seedana articles and thereafter, she has filed a domestic violence case against her husband and mother-in-law in D.V.No.166 of 2013 on the file of learned District Munsif-cum-Judicial Magistrate Court, Neyveli, however, the same was withdrawn by her on the advise of family members.

4. When the matter stood as above, he pleaded, the respondent/husband has filed G.W.O.P.No.26 of 2013 on the file of learned District Judge, Trichy, seeking custody of children. Besides, he has also filed H.M.O.P.No.116 of 2018 on the file of learned Family Court, Trichy, seeking for divorce on the ground of cruelty and desertion. Subsequently, the petitioner/wife has also filed H.M.O.P.No.813 of 2018 on the file of learned Sub-Court, Tambaram, seeking for restitution of conjugal rights, and in the said proceedings, necessarily the respondent/husband has to appear whenever called for, and therefore, the case filed by the husband may be transferred to the file of learned Sub-Court, Tambaram. It is further submitted that G.W.O.P.No.26 of 2013 filed by the husband was already ordered on 10.02.2016 by the learned District Judge, Trichy, granting only visitation rights to the wife and the same is also put to challenge before this Court by filing C.R.P.No.1302 of 2016 and the same is also pending.

5. Per contra, learned counsel appearing for the respondent/husband submitted that although the husband went to Qatar, now he has come back to Trichy and he is now living along with her two school going children. However, in view of police complaint given by his wife, he has filed H.M.O.P.No.116 of 2018 on the file of learned Family Court, Trichy, seeking for divorce and the same is pending now. It is further submitted that when G.W.O.P.No.26 of 2019 was filed by the respondent/husband on the file of learned District Judge, Trichy, it was contested by both parties and in the said proceedings, the petitioner/wife has never asked for transfer of the same and finally, learned District Judge, by order dated 10.02.2016, allowed the petition seeking visitation rights in favour of husband and the wife was granted only visitation rights. Against which, the petitioner/wife preferred C.R.P.No.1302 of 2016 and the same is pending before this Court. Therefore, when the petitioner/wife chosen not to ask for transfer of GWOP, seeking transfer of divorce petition filed by husband cannot be sustained and on this basis, he prayed for dismissal of the present transfer petition.

6. I fully agree with the above said submissions, for the reasons that when G.W.O.P.No.26 of 2016 was filed by the husband before the learned District Judge, Trichy, seeking for custody of children, the petitioner/wife has not sought for transfer of the same and on the other hand, it was

contested in full and finally, learned District Judge, Trichy, by ordered dated 10.02.2016, allowing custody of children in favour of the respondent/husband, granted only visitation rights to the petitioner/wife, and therefore, now she cannot turn around and ask for transfer of divorce case filed by the husband on the ground that contesting the case at Family Court, Trichy, is convenience to her. Secondly, the respondent/husband has now come back to Trichy from Qatar and he is now taking care his two school going children. Therefore, this Court, finding no balance of convenience in favour of wife, is inclined to dismiss the Transfer Civil Miscellaneous Petition filed by her and accordingly, it is dismissed. Consequently, connected CMP.No.25160 of 2019 is closed.

Sd/-  
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

rkm

To

- 1.The Subordinte Judge,  
Sub-Court, Tambaram.
- 2.The Family Court Judge,  
Family Court, Trichy.

Tr.C.M.P.No.922 of 2019

VG II(CO)  
CB(21/10/2020)

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