

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

Tr.C.M.P.No.1026 of 2019

V.Sridevi

..Petitioner

Versus

M.Murali

..Respondent

Prayer: Petition has been filed under Section 24 of the Civil Procedure Code praying to withdraw O.S.No.308 of 2019 pending on the file of learned Family Court No.5, Chennai, and to transfer the same to the file of learned Sub-Court, Gudiyatham, to try along with H.M.O.P.No.96 of 2019, for a joint trial.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.S.Siva Shanmugam

O R D E R

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

2. The petitioner/wife has filed this Transfer Civil Miscellaneous Petition seeking to transfer O.S.No.308 of 2019 from the file of learned Family Court No.5, Chennai, to the file of learned Sub-Court, Gudiyatham, to try along with H.M.O.P.No.96 of 2019 filed by the wife for restitution of conjugal rights. The above said suit was filed by the respondent/husband on the file of learned Family Court No.5, Chennai, seeking to declare the marriage held on 08.03.2018 as null and void.

3. Mr.N.Manoharan, learned counsel for the petitioner/wife submitted that after the marriage was solemnized on 08.03.2018 between the petitioner and the respondent in the petitioner's house at Amanangkuppam Village, Gudiyattam Taluk, the same was also registered before the Sub-Registrar, Gudiyattam. Thereafter, they were living in the quarters

allotted to the respondent/husband at Door No.84/4, CPWD Quarters, K.K.Nagar, Chennai. But, no child was born to them out of this wedlock. Whiles, the respondent and his parents have started ill-treating her, besides, the respondent/husband also has developed illegal intimacy with one Latha who is working as Junior Accounts Officer, Archaeological Survey of India, Chennai, and also started to having association with other female persons. Therefore, the petitioner/wife filed D.V.A.No.22 of 2019 before the learned Judicial Magistrate, Gudiyattam, and also filed H.M.O.P.No.96 of 2019 on the file of learned Sub-Court, Gudiyattam, seeking for restitution of conjugal rights. Since these two cases are pending at Gudiyattam, the case filed by the respondent/husband in O.S.No.308 of 2019 on the file of learned Family Court No.5, Chennai, may also be transferred to the file of learned Sub-Court, Gudiyattam, for joint trial.

4. Learned counsel for the petitioner further submitted that after the marriage with one Mr.Samson Thirunavukkarasu held on 16.02.2017, the said marriage was divorced by mutual agreement and only thereafter, the second marriage was contracted with the respondent after getting consent from him and his parents. Therefore, there is nothing wrong in marrying the respondent after the first marriage with Mr.Samson Thirunavukkarasu was divorced by mutual agreement. In any event, since two cases filed by the petitioner/wife are pending at Gudiyattam, for the balance of convenience of parties, the case filed by the respondent/husband in O.S.No.308 of 2019 on the file of learned Family Court No.5, Chennai, may be transferred to the file of learned Sub-Court, Gudiyattam, for joint trial.

5. Per contra, Mr.S.Siva Shanmugam, learned counsel for the respondent/husband submitted that the respondent/husband is a Government servant working as Teacher. Whiles, the petitioner/wife, without lawfully divorcing her first marriage, concealing the same, contracted the second marriage with the respondent. Since the first marriage of the petitioner with one Mr.Samson Thirunavukkarasu is still subsisting, the respondent/husband has filed O.S.No.308 of 2019 before the learned Family Court No.5, Chennai, to declare the marriage held on 08.03.2018 with the petitioner as null and void. Therefore, the allegation of the petitioner/wife that after the mutual agreement of divorce, she married the respondent is unjustified and unacceptable. Further, D.V.No.22 of 2019 filed by the wife before the learned Judicial Magistrate, Gudiyattam, is also stayed by this Court in Crl.O.P.Nos.30305 and 30308 of 2019. Therefore, the argument of the petitioner/wife that O.S.No.308

of 2019 filed by the husband before the learned Family Court No.5, Chennai, should be transferred for joint trial is not justifiable. Hence, the plea of the petitioner/wife by concealing the subsistence of first marriage with one Mr.Samson Thirunavukkarasu and by contracting the second marriage with the respondent stating that there was a mutual agreement of divorce with the first husband is liable to be rejected.

6. I also find merit on the above said submission made by the learned counsel for the respondent/husband. As could be seen from paragraph No.6 of the affidavit filed by the wife in support of the transfer petition, it is clear that the petitioner/wife had initially married one Mr.Samson Thirunavukkarasu on 16.02.2017. But, the said marriage was divorced by mutual agreement without the decree for divorce before the Court of Law. Therefore, as rightly canvassed by the learned counsel for the respondent/husband, the respondent ought not to have contracted second marriage with the petitioner. However, since the petitioner has contracted second marriage with the respondent concealing her first marriage with one Mr.Samson Thirunavukkarasu, the respondent/husband has rightly filed O.S.No.308 of 2019 before the learned Family Court No.5, Chennai, seeking to declare the marriage held on 08.03.2018 between them as null and void on the ground that the petitioner's marriage held on 16.02.2017 with one Mr.Samson Thirunavukkarasu was not rescinded. Secondly, D.V.No.22 of 2019 filed by the wife before the learned Judicial Magistrate, Gudiyattam, is also stayed by this Court in Crl.O.P.Nos.30305 and 30308 of 2019.

7. Thus, considering the fact that the petitioner/wife, concealing the subsistence of first marriage, had contracted second marriage with the respondent/husband, and also the fact that the respondent/husband is having two school going children with him born through his first wife, this Court is not inclined to accept the prayer of the petitioner seeking to transfer O.S.No.308 of 2019 filed by the husband from the file of learned Family Court No.5, Chennai, to the file of learned Sub-Court, Gudiyattam. Accordingly, the Transfer Civil Miscellaneous Petition is dismissed as devoid of any merit. Consequently, C.M.P.No.27413 of 2019 is closed.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

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To

1. The Judge, Family Court No.5, Chennai.
2. The Subordinate Judge, Gudiyattam.

Tr.C.M.P.No.1026 of 2019

LN (CO)

KKV/18/08/2020



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