



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2022

CORAM

THE HON'BLE Ms.JUSTICE P.T.ASHA

Tr.C.M.P.No.726 of 2021

and

C.M.P.No.17745 of 2021

S.Ananthakrishnan

... Petitioner

Vs

B.Shyamala Savithiri

... Respondent

PRAYER : Transfer Civil Miscellaneous Petition is filed under Section 24 of Civil Procedure Code, to withdraw F.C.O.P.No.44 of 2020 pending on the file of the Family Court, Chengalpet and transferring the same to the Subordinate Judge, Tambaram for joint Trial along with H.M.O.P.No.505 of 2019 and F.C.M.C.1 of 2021 on the file of the Subordinate Judge, Tambaram and for disposal.

For Petitioner : Mr.K.Narasimhan

For Respondent : Mr.K.Perumal

O R D E R

The petitioner-husband has filed this petition to transfer F.C.O.P.No.44 of 2020 pending on the file of the Family Court, Chengalpet to be tried along with H.M.O.P.No.505 of 2019 and F.C.M.C.No.1 of 2021, both of which, are now pending on the file of the Subordinate Judge, Tambaram.

2. The petitioner-husband would submit that he had, in earlier in point of time, moved a petition seeking restitution of conjugal rights in H.M.O.P.No.505 of 2019 on the file of the Sub Court, Tambaram. The wife had filed F.C.M.C.No.12 of 2019 on the file of the Family Court, Chennai. Thereafter, the



husband had filed Tr.C.M.P.No.545 of 2019 before this Court seeking to transfer the said maintenance case to the Sub Court, Tambaram for joint trial with H.M.O.P.No.505 of 2019. This petition came to be allowed by this Court on 22.08.2019. Thereafter, when it was transferred to the file of the Sub Court, Tambaram, F.C.M.C.No.12 of 2019 was re-numbered as F.C.M.C.No.1 of 2021. After transfer of the petition and despite taking a stand before this Court that she will not seek for divorce, but was also not inclined for re-union, the respondent had filed F.C.O.P.No.44 of 2020. This petition, after filing of the Tr.C.M.P, had been dismissed for default and therefore, there is no matter pending before the Court below. However, the learned counsel for the respondent/wife would submit that an application for restoring the petition has already been filed, and he would further submit that since the joint trial has been directed by this Court, therefore, the present petition in F.C.O.P.No.44 of 2020 should also be heard along with two petitions, as the cause of action is one and the same.

3. Further, the learned counsel for the petitioner-husband argued that if the petition continues on the Family Court, Chennai, he would have to appear for each and every hearing and that apart, there is a chance of conflicting judgments. Therefore, considering the earlier orders, interest of justice would be served, if F.C.O.P.No.44 of 2020 now pending on the file of the Family Court, Chengalpet, is transferred to the Sub Court, Tambaram to be tried along with H.M.O.P.No.505 of 2019 and F.C.M.C.No.1 of 2021 pending on the file of the Sub Court, Tambaram. However, it is seen that the husband has not taken steps to maintain the respondent-wife or his 3 year-old child, who is under the care and custody of the mother. The husband is bound to maintain, if not the wife, atleast his child

4. In these circumstances, while allowing this transfer petition, a direction is issued to the Subordinate Judge, Tambaram to initially take up the maintenance case and at least pass interims orders of payment before hearing the other petitions and thereafter, take up the petitions for restitution and divorce. Further, a direction is also issued to the Family Court, Chengalpet, to restore F.C.O.P.No.44 of 2020, which has been dismissed for default. The learned counsel for the petitioner-husband would submit that petitioner-husband has no objection for allowing the restoration petition. After the said petition is ordered, the matter shall be withdrawn from the file



of the Family Court, Chengalpet and transferred to the file of the Subordinate Court, Tambaram, to be tried along with H.M.O.P.No.505 of 2019 and F.C.M.C.No.1 of 2021. Accordingly, Tr.C.M.P.No.726 of 2021 is allowed. No costs. Consequently, connected miscellaneous petition is closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

srn
To

1. The Family Court,
Chengalpet.
2. The Subordinate Court,
Tambaram.
3. The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.K.Narasimhan, Advocate Sr.15790
+1cc to Mr.K.Perumal, Advocate Sr.15678

Tr.C.M.P.No.726 of 2021
and
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srg 25/03/2022