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C.R.P.No.140 of 2023

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2024

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THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

CRP NO.140 OF 2023
AND CMP NO.1176 OF 2023

A.Aparna ... Petitioner / Petitioner

Vs.

N.Vinoth Kumar ... Respondent / Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated October 15, 2022 made in Tr.O.P.No.131 of 2021 on the file of the Principal District Court, Cuddalore.

For Petitioner : Mr.V.Balamurugan
For Respondent : Mr.K.Prakash

ORDER

Aggrieved by the Order dated October 15, 2022 passed by 'Principal District Court, Cuddalore' ['Trial Court' for short] in Tr.O.P.No.131 of 2021, the petitioner therein / wife has preferred this Civil Revision Petition under Article 227 of the Constitution of India. The respondent herein is the husband of the Civil Revision Petitioner.



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2. The respondent herein / husband had filed H.M.O.P.No.59 of 2021 on the file of Sub Court, Punrothi under Section 12(1) (a) & (c) of 'Hindu Marriage Act, 1955' ['H.M. Act' for short] praying to declare the marriage between the parties held on March 31, 2021 as null and void.

3. The petitioner herein / wife, vide the said Tr.O.P.No.131 of 2021, sought to transfer the said H.M.O.P No.59 of 2021 to the file of Family Court, Cuddalore on the ground that she was seven months pregnant; that she was taking treatment at Cuddalore Government Hospital; that her aged parents are under her care and custody; that she has no permanent income; that she is unable to afford the travel to Trial Court.

4. The respondent herein / husband filed counter stating that at the time of filing Tr.O.P.No.131 of 2021, the petitioner herein / wife was pregnant but now she has begotten a child and both are hale and healthy; that the travel distance to the Trial Court and that to the Family Court, Cuddalore, from petitioner herein / wife's residence is the same. Accordingly, he prayed to dismiss the Tr.O.P.No.131 of 2021.



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5. The Trial Court upon hearing either side and perusing the records, concluded that the travel distance to the Trial Court and to the Family Court, Cuddalore is more or less the same from the petitioner's residence and accordingly dismissed Tr.O.P.No.131 of 2021.

6. Post the dismissal, the subsequent development is that the petitioner herein / wife filed H.M.O.P. No.401 of 2022 seeking restitution of conjugal rights under Section 9 of H.M. Act before Family Court, Cuddalore.

7. Learned Counsels on either side reiterated the averments made in their respective pleadings before the Trial Court.

8. Considering the facts and circumstances of the case as well as the subsequent development of filing of H.M.O.P.No.401 of 2022, bearing in mind the fact that wife's convenience is to be prioritized in such cases [See *N.C.V. AISHWARYA -vs- A.S. SARAVANA KARTHIK SHA*, reported in *2022 Live Law (SC) 627*], this Court is of the view that this Civil Revision Petition shall be allowed, the Order passed in Tr.O.P.No.131 of 2021 shall be set aside and H.M.O.P. No.59 of 2021 shall be transferred to the file of Family Court, Cuddalore.



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9. Considering the facts and circumstances of the case, on receipt of the case files, the Family Court, Cuddalore shall try both the Hindu Marriage Original Petitions jointly and dispose of the matter as expeditiously as possible. Further, the Family Court, Cuddalore shall not insist on the appearance of the respondent herein / husband except on effective hearing dates, that means, he shall not be directed to appear before commencement of trial.

10. Resultantly, the Civil Revision Petition is allowed. H.M.O.P. No.59 of 2021 shall be withdrawn from the Trial Court and be transferred to the Family Court, Cuddalore for joint trial with H.M.O.P. No.401 of 2022. Considering the facts and circumstances of this case, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
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To

The Principal District Court
Cuddalore.



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R.SAKTHIVEL, J.

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