



C.R.P.(MD).No.352 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 25.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(PD)(MD)No.352 of 2019

and

C.M.P(MD) No.1712 of 2019

1. Surya

2.Minor. Sathya
(Minor 2nd Petitioner represented through
his mother and Guardian Kavitha)

... Petitioners/Petitioners/
Petitioners

-vs-

Jothi @ Jothiraja

... Respondent/Defendant/
Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 05.10.2018 passed in I.A.No.35 of 2018 in H.M.O.P.No.156 of 2012 on the file of the learned Principal Subordinate Judge, Kumbakonam.



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For Petitioners : Mr.Maragathavel

For Respondent : No appearance

ORDER

The instant Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 05.10.2018 passed in I.A.No.35 of 2018 in H.M.O.P.No.156 of 2012 on the file of the learned Principal Subordinate Judge, Kumbakonam.

2. The learned Counsel appearing for the petitioners would submit that, the petitioners moved an application to implead themselves as parties to the petition in H.M.O.P.No.156 of 2012, on the ground that there was a direction given by the trial Court on 05.11.2015 in the said H.M.O.P to return the jewels and other gifted articles, which had been given during the marriage. It is pertinent to mention here that the direction was made, in an maintenance application filed by the children of the proposed 3rd petitioner and the respondent.



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3. It is pertinent to mention here that subsequent to the order, the said order has been challenged before the appellate Court in C.M.A.No.30 of 2016, wherein the order in H.M.O.P.No.156 of 2012, dated 05.11.2015 was set aside and the matter was remitted back to the trial Court. Only in those circumstances, the petitioners have come forward to file the impleading application. The very ground alleged in the said impleading application is that there is a direction by the Court, to hand over the jewels and other gifted articles. Therefore, he becomes the necessary party.

4. It is pertinent to mention here that the very H.M.O.P.No.156 of 2012 has been filed under Section 26 of the Hindu Marriage Act claiming maintenance by the children. Therefore, in the maintenance suit, if the proposed 3rd petitioner is impleaded, then, there is a possibility for enlargement of the scope of the application. Therefore, this Court is of the view that the dismissal order passed by the Court below that the proposed 3rd petitioner is not proper and necessary party is liable to be confirmed.



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5. In the result, this Civil Revision Petition is **dismissed**. However, the petitioners are given liberty to adjudicate their remedy, if any, available according to law and the dismissal of the Civil Revision Petition will in no way affect their other legitimate rights. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

25.09.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Principal Subordinate Judge,
Kumbakonam.



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C.KUMARAPPAN,J.

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