

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2015

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.142 of 2015

N.Porkodi

... Petitioner

v.

R.Seenu

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 30.04.2011 made in I.A.No.2653 of 2010 in O.P.No.1036 of 2003 on the file of II Additional Family Court at Chennai.

For Petitioner : Ms.V.Uma Shankari

For respondent : MR.B.V.Suresh Kumar

ORDER

Challenging the fair and final order passed in I.A.No.2653 of 2010 in O.P.No.1036 of 2003 on the file of II Additional Family Court, Chennai, the petitioner, who is the wife of the respondent, has filed the above Civil Revision Petition.

2. The respondent filed the Original Petition in O.P.No.1036 of 2003 for divorce on the ground of cruelty.

3. According to the learned counsel on either side, the original petition in O.P.No.1036 of 2003 was decreed on 30.04.2011. In the said Original Petition, the petitioner-wife filed an application in I.A.No.551 of 2010 to direct the respondent-husband to return the stridhana articles. Similarly, the respondent-husband filed I.A.No.2653 of 2010 to direct the petitioner-wife to return the gold jewellery mentioned in the annexure.

4. The Family Court, by common order dated 30.04.2011, allowed the application in I.A.No.551 of 2010 with regard to two properties alone. The Family Court also allowed the application in I.A.No.2653 of 2010 and directed the petitioner-wife to handover the gold jewellery to the respondent-husband.

5. Aggrieved over the order passed in I.A.No.551 of 2010, the respondent-husband filed Civil Revision Petition in C.R.P.(PD) No.3883 of 2011 and this court by order dated 28.10.2011 set aside the order passed in I.A.No.551 of 2010 and remitted the matter back to the II Additional Family Court, Chennai to decide the same afresh, after considering the entire evidence available before the court.

6. Though the Civil Revision Petition in C.R.P.(PD) No.3883 of 2011 was disposed of after hearing both sides on 28.10.2011 itself, as against the application in I.A.No.2653 of 2010, the petitioner choose to remain silent for nearly four years and filed the present Civil Revision Petition only in January 2015. The petitioner has not given any reason for the laches in filing the Civil Revision Petition after a lapse of four years. A party should be diligent enough in prosecuting the matter in a proper manner. When the Family Court had disposed of both the applications, viz., I.A.Nos.551 of 2010 and 2653 of 2010 by common order and against one order, the respondent-husband has filed the Civil Revision Petition in the year 2011 itself and the same was also disposed of by this court in October 2011, the reason for the petitioner keeping quiet for four years is not known.

7. The Family Court, after taking into consideration the case of both the parties, found that the petitioner is liable to return 19¾ grams of gold

jewellery to the respondent-husband. The Family Court also took into consideration the order passed by this court in C.R.P.(PD)No.2079 of 2010, dated 23.08.2010 while allowing the application.

8. The learned counsel appearing for the petitioner submitted that the parties may be directed to adduce oral evidence before the Family Court. In support of his contention, the learned counsel, relied upon a judgment of the Hon'ble Supreme Court reported in **1997 INSC 710 [Balkrishna Ramchandra Kadam v. Sangeeta Balkrishna Kadam]**.

9. Since no request was made before the Family Court by the revision petitioner for adducing oral evidence, the Family Court decided the matter based on the materials available before the court. Therefore, the judgment relied upon by the learned counsel for the petitioner is not applicable to the case on hand.

10. Since the Family Court had taken into consideration all these aspects and allowed the applications, I am of the considered view that the order passed by the Family Court is just and proper.

11. In these circumstances, I do not find any error or irregularity in the order passed by the Family Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil

Revision Petition is dismissed. It is open to either of the parties to let in oral and documentary evidence in the Execution Petition. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes/No

18.12.2015

Rj

To

The II Additional Family Court
Chennai.

M. DURAISWAMY,J.,

Rj

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