

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED : 21.01.2016****CORAM :****THE HONOURABLE MS.JUSTICE R.MALA****C.R.P.(PD) No.3437 of 2015**

Mariya Layola John

... Petitioner

vs.

Ramya

... Respondent

Civil Revision Petition filed under Article 227 of Constitution of India, seeking to set aside the fair and decreetal order dated 29.06.2015 made in I.A.No.140 of 2015 in FCHMOP No.104 of 2014 on the file of the learned Family Court, Dharmapuri.

For Petitioner : Mr.R.Prabakar

For Respondent : Mr.Rajnish Pathiyil

ORDER

Challenging the impugned order dated 29.06.2015 made in I.A.No.140 of 2015 in FCHMOP No.104 of 2014 on the file of the Family Court, Dharmapuri, the petitioner has come up with the present Revision Petition.

2. According to the petitioner/husband, who is a Christian, the marriage between him and the respondent/wife, a Hindu, was a love marriage and it was conducted on 18.11.2010. Due to misunderstanding between them, the respondent/wife filed a

petition seeking divorce from the petitioner/husband under Section 13(1)(i-a) of the Hindu Marriage Act, on 13.12.2012. The petitioner/husband filed a petition under Order 7 Rule 11 in I.A.No.140 of 2015, on 07.03.2015 seeking dismissal of the divorce petition filed by the respondent/wife, on the ground that the said petition filed under Section 13(1)(i-a) of the Hindu Marriage Act is not maintainable, as he and his wife belong to different religions and that in their case, a divorce petition can be filed only as per the Special Marriage Act.

3. In the counter filed before the Trial Court, the respondent/wife has stated that the marriage between her and the petitioner/husband took place on 18.11.2010 at Pochampalli Karumalai Aandavar Thirukovil as per Hindu rites and customs and that the petitioner/husband has also signed in the Marriage Receipt that he is a Hindu, by name John. She has further stated therein that the main intention of the petitioner/husband is to drag the proceedings, despite being aware of the facts.

4. The Trial Court, after hearing the submissions of the counsel on either side and on material consideration, dismissed I.A.No.140 of 2015 filed by the petitioner/husband, on 29.06.2015 on the ground that the petitioner/husband has not expressed any

objection to the respondent/wife's submission that their marriage was conducted as per Hindu rites and customs and hence, held that the petition seeking dismissal of the divorce petition filed under Section 13(1)(i-a) of the Hindu Marriage Act, is unsustainable, as a mixed question of fact and law is involved. Challenging the same, the present Revision Petition is filed.

5. Learned counsel for the petitioner/husband would submit that it is an admitted fact that the petitioner/husband is a Christian by birth. Though the marriage was performed as per Hindu Rites and Customs before the Hindu Temple, since the petitioner/wife is a Christian, she cannot file a petition seeking divorce under the Hindu Marriage Act, as it is not maintainable. To substantiate his case, he relied upon two decisions, viz. a Bombay High Court judgment in the case of **Niranjani Roshan Rao v. Roshan Mark Pinto** in **Family Court Appeal No.124 of 2013** and a decision of this Court in the case of **G.Packia Raj v. P.Subbammal alias Susila Bai** reported in **AIR 1991 Madras 319**.

6. Resisting the same, learned counsel appearing for the respondent/wife would submit that in paragraph 4 of the counter, it was stated that the petitioner/husband at the time of marriage,

changed his religion as Hindu and mentioned his name as John and Marriage Certificate has been issued by the Temple authorities. He would also submit that marriage has been performed as per Hindu rites and customs. According to him, that aspect has been rightly considered by the Trial Court. It is his strenuous contention that whether the petitioner/husband has converted his religion or not is an issue to be decided only after considering the oral and documentary evidence. Hence, he prayed for dismissal of the Revision Petition.

7. On a perusal of the typed set of papers, it is seen that the respondent/wife filed an application for divorce on the ground of cruelty. It is admitted by both sides that the wife is a Hindu by birth and the husband is a Christian by birth. It is also an admitted fact that their marriage has been performed in the Temple as per Hindu rites and customs and after the marriage, both are not living together. Hence, she filed a petition for divorce. But, the petitioner/husband is disputing the petition filed under Hindu Marriage Act that it is not maintainable.

8. Coming to the Bombay High Court decision relied on by the learned counsel for the petitioner/husband, it is seen that the said decision is not applicable to the facts of this case. In that case,

the wife is a Hindu and the husband is a Christian. After marriage, both were following their respective religion. On that basis only, the Court has held that even though the marriage has been performed as per the Hindu rites and customs, after the marriage, both the spouses are following the respective religion. In such circumstances, there is no cause of action for filing the application. On that basis, the Bombay High Court allowed the application under Order 7 Rule 11. But, in the case on hand, the marriage has been performed as per Hindu rites, but whether the petitioner/husband is following Christianity or Hinduism can be ascertained only after letting in oral and documentary evidence.

9. As far as the judgment of this Court relied on by the learned counsel for the petitioner in **AIR 1991 Madras 319**, it is seen that divorce application has been filed under Section 10 of the Indian Divorce Act. In the said case, the wife is a Christian and the husband is a Hindu. It was held therein that the petition under Section 7A of the Hindu Marriage Act is not applicable to that case. While in the case on hand, in paragraph 4 of the counter, it is specifically mentioned that at the time of marriage, the petitioner/husband converted himself into a Hindu and signed the Marriage Certificate as 'John', before the Temple authorities. So, the said citation is not applicable to the facts of the present case.

10. Thus, it is seen that the Trial Court has rightly considered all these aspects and rejected the I.A. filed by the petitioner/husband, since the petitioner/husband has mentioned his religion as Hindu in the Receipt issued by the Temple at the time of his marriage and mentioned his name as John and that after marriage, whether the petitioner/husband is following Christianity or Hinduism can be ascertained only after letting in oral and documentary evidence.

11. In such circumstances, I am of the view that the case on hand involves a mixed question of fact and law that can be decided only after taking into account the oral and documentary evidence and the Trial Court has rightly considered the said aspect. Hence, I do not find any reason to interfere with the finding of the Trial Court. **Accordingly, the Civil Revision Petition is dismissed as it is devoid of merits, however with costs. The petitioner/husband is directed to pay a sum of Rs.2000/- (Rupees Two Thousand only) to the Tamil Nadu Chief Minister Flood Relief Fund within a period of four weeks from the date of receipt of a copy of this order.**

12. As the learned counsel for the respondent/wife made a plea for early disposal of the petition in F.C.H.M.O.P.No.104 of 2014,

the Trial Court is directed to dispose of the same within a period of four (4) months from the date of receipt of a copy of this order.

Consequently, connected Miscellaneous Petition is closed.

21.01.2016

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To:

The Family Court, Dharmapuri.

R.MALA,J.

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C.R.P.(PD) No.3437 of 2015

Dated: 21.01.2016