

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R. SHIVAKUMAR

C.R.P.[PD] No.3774 of 2015

K.Sekar

... Petitioner

.. Vs ..

M.Dhivya

... Respondent

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 11.08.2015 passed by the learned III Additional Judge, Family Court, Chennai, in I.A.No.117 of 2015 in O.P.No.1562 of 2014.

For Petitioner	:	Mr.Lenin
		for M/s.Lenin and Bhagya
For Respondent	:	Mr.Devaraj Mahesh

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ORDER

The arguments advanced by Mr.Lenin, learned counsel for the petitioner and by Mr.Devaraj Mahesh, learned counsel for the respondent are heard.

2. The respondent is none other than the wife of the petitioner herein. The petitioner filed the O.P.No.1562 of 2014, which is now pending on the file of the learned III Additional Judge, Family Court, Chennai, for the relief of divorce on the ground of cruelty. In fact, the petition was sought to be filed both on the ground of cruelty and desertion. Since the pleading revealed that the desertion alleged by the petitioner was not the minimum period of desertion contemplated under the statute enabling him to seek divorce on the ground of desertion, the petition was sought to be returned questioning how a petition for divorce on the ground of desertion would lie. But the petitioner chose to delete the ground of desertion, accepting the objection raised by the office of the Family Court. Thereafter, the respondent (wife) entered appearance. Subsequently, on completion of two years from the date on which the petitioner and the respondent

started living separately, the petitioner filed I.A.No.117 of 2015 seeking permission to amend the petition to include the ground of desertion also as one of the grounds on which the relief of divorce was sought for. The said application was resisted by the respondent herein. The learned trial Judge, after hearing both sides, chose to dismiss the said petition by an order dated 11.08.2015 on the premise that one more ground, which was not available at the time of filing of the original petition, was sought to be included, thereby changing the nature of the proceeding. It is as against the said order of the learned III Additional Judge, Family Court, Chennai, the present civil revision petition came to be filed.

3. It is the contention of the learned counsel for the petitioner that though the ground of desertion for seeking divorce was not available on the date of filing of the original petition, since the period of desertion was a little sort of two years, subsequently, on completion of the period of two years of alleged desertion, the petitioner became entitled to seek divorce on that ground also and that hence, he applied for amendment of the original petition seeking divorce on the ground of desertion also.

4. The learned counsel for the respondent would submit that the cause of action for seeking divorce on the ground of desertion having not arisen on the date of presentation of the original petition, the prayer of the petitioner was rightly rejected by the learned trial Judge and that in any event, the dismissal of the amendment petition would not have the effect of snatching the right of the petitioner to file a separate petition for divorce on the ground of desertion from him.

5. The contention of the learned counsel for the petitioner, on the other hand, is that when the petitioner can file a separate petition, why not he be permitted to seek the same relief in the already instituted petition so as to avoid multiplicity of proceeding and also avoid a need for seeking joint trial, in case, he is driven to file a separate petition.

6. For the said contention of the learned counsel for the petitioner, the learned counsel for the respondent does not have a satisfactory answer. Any change of circumstances pending a proceeding can also be taken into account in allowing the applications

for amendment of the pleading so as to avoid multiplicity of proceeding and to render complete justice. Though it may be out of context, this Court deems it appropriate to make an analogy of a civil case in which a relief is sought for originally which is made infructuous by the act of the opposite party wherein the Courts are allowing amendment to modify the prayer based on the subsequent changes in the circumstances. Similarly, in partition suits, death of the parties are also taken into consideration even after the passing of preliminary decrees, for rendering complete justice among the sharers, permitting the parties to seek a further preliminary decree or a final decree, taking into account all the events subsequent to the filing of the suit.

7. Family Courts are established for comprehensive disposal of family disputes between husband and wife and among the family members. If the parties are driven to file a number of petitions on different grounds, then the very purpose of enacting the Family Court's Act and establishment of Family Courts will be defeated. The lower Court ought to have considered all those aspects and allowed the petition. As the lower Court has not done so, this Court is of the view that the lower Court has failed to exercise jurisdiction conferred on it

properly. On that ground alone, the order of the trial Court is bound to be set aside.

8. Accordingly, the Civil Revision Petition is allowed and the order of the Court below dated 11.08.2015 passed in I.A.No.117 of 2015 in O.P.No.1562 of 2014 is set aside. I.A.No.117 of 2015 shall stand allowed. The amendment shall be carried out within two weeks from today. Thereafter, the respondent shall be given an opportunity to file additional counter.

08.02.2016

Index :Yes
Internet :Yes
Jrl

To
III Additional Judge,
Family Court, Chennai.

P.R. SHIVAKUMAR, J.

Jrl

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