

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.12.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.845 of 2011
and
M.P.No.1 of 2011**

Palani @ Palanisamy

.. Petitioner

Vs.

Santha

..Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order passed in I.A.No.83 of 2009 in HMOP.No.129 of 2006, dated 17.12.2009, on the file of the Subordinate Court, Namakkal.

For Petitioner : Mr.R.Jayaprakash

For Respondent : Not ready in notice

ORDER

The case of the revision petitioner is that he has filed the above H.M.O.P .No 129 of 2006 for divorce against the respondent wife

praying for dissolution of their marriage that was solemnized on 12.11.1987.

2.The case of the revision petitioner in brief is that in the year 2006 the above petition U/s 13 (1) (Ia) & 1(b) of the Hindu Marriage Act of 1955 in H.M.O.P.No 129 of 2006 came to be filed by him for divorce on the grounds of cruelty, Psychopathic disorder and dissipation, alleging that the respondent has wantonly for more than 5 years has dissipated the revision petitioner. Being so, the revision petitioner in the year 2009 came across that some formal defects such as Date of Marriage, date of birth of their children were mistakenly mentioned in his Divorce petition. That apart some key points which would play vital role to substantiate his case were also found omitted in the above petition in H.M.O.P.No 129 of 2006. Therefore the Revision petitioner has filed an Interlocutory application in I.A.No.83 of 2009, Under Order XXIII Rule 1(3) CPC R/w Section 21 of Hindu Marriage Act, 1955, praying for the leave of Court to Withdraw H.M.O.P.No 129 of 2006 with liberty to file Fresh suit in the same cause of action. However without proper appreciation of facts, the Trial court by its order dated 17.12.2009 has erroneously dismissed the revision petitioner's application in I.A.No.83 of 2009 and the said order

of dismissal is challenged herein.

3.I heard Mr.R.Jayaprakash, learned counsel appearing for the petitioner.

4.The learned counsel for the petitioner submitted that the trial court without proper appreciation of facts has mechanically dismissed the revision petitioner's application. The Trial court ought to have found that Under Order XXIII Rule 1(3) CPC liberty to file Fresh suit in the same cause of action is permissible. Only if such liberty is granted by the Trial court, the revision petitioner will be able to outcome the formal defects such as Date of Marriage, date of birth of their children and thereby will be able to file a fresh petition with correct particulars to substantiate his claim. When it is the specific case of the revision petitioner that some key points which would play vital role to substantiate his case were found omitted, then the Trial court in the interest of justice ought to have exercised its discretion in favour of the revision petitioner, thereby granting liberty to file Fresh suit in the same cause of action.

5.None appears on behalf of the respondent, but it is the

averment made in the counter that the above application of the revision petitioner is a sheer abuse of process of law and a classic protracting technique. The same can be ascertained from the very fact that having filed the main petition in H.M.O.P .No 129 of 2006 in the year 2006 itself, now the revision petitioner after about three years has come up with the present Interlocutory Application in I.A.No.83 of 2009 praying for liberty to file Fresh suit in the same cause of action. It is noteworthy that the revision petitioner despite filed the main H.M.O.P in the year 2006 itself, but never chose to conduct the same. The revision petitioner has not chosen to conduct the case deliberately and wantonly, whereas the respondent residing at Kerala, has duly attended all the court proceedings in due respect to the court. Thus she was put to lot of pain and suffering and also spent a lot of money and time in attending the divorce proceedings. The inaction of the revision petitioner to conduct the case, as well as the filing of the above I.A is nothing but a patent abuse of law.

6.On perusal of the typed set of papers it is found that the above H.M.O.P.No.129 of 2006 is being filed by the revision petitioner in the year 2006 itself. Thereafter the revision petitioner has not conducted his case for three years. Whereas in the year 2009, when the Trial

court has posted the case as the Last Chance for conduction of case by the revision petitioner, he has filed the above application Under Order XXIII Rule 1(3) CPC praying for liberty to file a Fresh suit in the same cause of action. Thus it is obvious that the revision petitioner having not taken any effort to conduct his case for all these three years, now since the case was been posted as Last Chance, has rushed with such application.

7. In so far as the contention raised by the revision petitioner that only filing of a new suit with all vital facts will substantiate his case, this court feels it as unacceptable and liable to be rejected. If really he is aggrieved of such inadvertence in mentioning such facts, he would have very well filed an application for Amendment. Instead the revision petitioner chose to pray for liberty to file a fresh suit, despite not having conducted the case all these three years. Moreover, as far as the revision petitioner's prayer to grant liberty to file a fresh suit on same cause of action, this court finds it as unsustainable, since for the reason that when the Date of Marriage i.e the cause of action in a earlier suit itself is alleged to be mistake, then a leave cannot be granted to file a fresh petition on the very same cause of action. Furthermore, if at all the revision petitioner is really interested in

conducting his case he would have amended his petition at earlier point of time and then would have proceeded. The conduct of the revision petitioner by not doing so, besides claiming that almost all the material particulars are erroneous and liable to be rectified is unacceptable. This court finds that the above application Under Order XXIII Rule 1(3) CPC is again a dilatory tactics, so as to prolong the matter endless.

8.In the light of the above legal preposition and the facts of the case on hand, the above Civil Revision Petition is dismissed. No cost. Consequently, connected miscellaneous petition is closed.

21.12.2016

Note:Issue order copy on 04.07.2017
Internet:Yes
Index:Yes

vs

To

The Subordinate Court,
Namakkal.

M.V.MURALIDARAN, J.

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