

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2016

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Civil Revision Petition (PD) Nos.2224 & 2225 of 2016
and
C.M.P.Nos.11521 & 11522 of 2016

N.Ruthramoorthy
S/o.Nataraj

... Petitioner in both revisions

vs

Sathiyapriya

... Respondent in both revisions

Civil Revision Petitions filed under Article 227 of the Constitution of India against the common order of learned Judge, Family Court, Salem, passed in I.A.Nos.318 and 319 of 2016 in F.C.O.P.No.114 of 2011 on 27.06.2016.

For Petitioner : Mr.T.R.Sundaram

For Respondent : Mr.R.Nalliyappan

COMMON ORDER

These revisions arise against the common order of learned Judge, Family Court, Salem, passed in I.A.Nos.318 and 319 of 2016 in F.C.O.P.No.114 of 2011 on 27.06.2016.

2. Petitioner/husband has filed F.C.O.P.No.114 of 2011 on the file of learned Judge, Family Court, Salem, seeking divorce. I.A.Nos.318 and 319 of 2016 were moved by petitioner/husband towards reopening the case and recalling him for adducing further evidence. Both petitions stand dismissed by Court below under the impugned order giving rise to these revisions.

3. Heard learned counsel for petitioner and learned counsel for respondent.

4. In the original petition in F.C.O.P.No.114 of 2011 dated 18.03.2011, petitioner/husband has informed the alleged date of adulterous act of the respondent/wife as 29.12.2009. However, in his proof affidavit therein dated 11.02.2013, petitioner/husband has informed such date as 28.12.2009. In the course of his cross-examination, he has informed the date to be 29.12.2009. Petitioner/husband has moved I.A.Nos.318 and 319 of 2016 contending that the

date of the alleged occurrence wrongly has been informed in the proof affidavit due to a typographical mistake. The Court below in dismissing the applications has informed that the the petitioner has informed the alleged date of occurrence as 29.12.2009 in the main petition as also in his cross-examination. In such circumstances, if the contention of petitioner/husband that a typographical mistake has occurred in informing the date of alleged occurrence as 28.12.2009 in the proof affidavit is accepted, it would cause grave prejudice to the respondent/wife.

5. Learned counsel for petitioner submits that the applications towards correcting the mistake in the date ought to have been allowed as it has been the consistent case of the petitioner that the alleged act of adultery took place on 29.12.2009, that informing the date as 28.12.2009 in the proof affidavit was an apparent mistake since even in his main petition, the petitioner has informed the date as 29.12.2009.

6. Learned counsel for respondent submits that there is no room for interference with the order of the Court below since the petitioner had been cross-examined at length regards the date of the alleged occurrence and the

defence of respondent not having indulged in any form of adultery would be severely affected if the petitioner is now permitted to alter the date of the alleged act in the proof affidavit. Learned counsel for respondent also informed that in G.O.P.No.16 of 2012 filed by petitioner/husband, he has mentioned the date of alleged act as 28.12.2009.

7. Learned counsel for petitioner, on the other hand, submits that in the counter to the restitution of conjugal rights petition moved by respondent/wife, the date stands correctly mentioned as 29.12.2009.

8. This Court is of the view that there is no need to interfere with the order of the Court below. The Court below has, before it, the entire evidence in the case. It is for the Court below to consider in the light thereof, whether the mentioning of the date as 29.12.2009 in the proof affidavit merely is a mistake or is not so. In arriving at a decision, the Court below shall not be influenced by anything stated herein above or for that matter in its finding in the interlocutory applications. The Court below shall now afford the petitioner/husband an opportunity to address arguments before it. Petitioner/husband shall make his submissions before the Court below on a

particular date fixed by it without in any manner protracting the proceedings.

The Court below shall pass orders in the main petition within a period of fifteen days of the date of submissions of arguments by petitioner/husband.

The Civil Revision Petitions are disposed of with the above direction. No costs. Consequently, connected miscellaneous petitions are closed.

27.07.2016

Note to office:

Issue order copy by 10.08.2016

Index:yes/no

Internet:yes

gm

To

The Judge,
Family Court,
Salem.

C.T.SELVAM, J

gm

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