

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 24.01.2014

CORAM

THE HON'BLE JUSTICE T. MATHIVANAN

C.R.P (PD) Nos.1299, 1560, 1561 and 1641 of 2006

M.Gunasekaran

...Petitioner IN CRP.1299,1560
& 1561/06

Vs.

M.Kalaiyarasi

...Respondents IN CRP.1299,1560
& 1561/06

M.Kalaiyarasi

...Petitioner/Respondent in CRP.1641/06

VS.

M.Gunasekaran

...Respondent/petitioner in CRP.1641/06

Civil Revision Petitions directed against the fair and decretal orders dated 21.7.2006 and 30.8.2006 respectively and made in I.A.No.123 of 2004, I.A.No.73 of 2004, I.A.No.23 of 2005 in OS.27/04 and I.A.No.124 of 2004 respectively in HMOP No.12 of 2004, on the file of the learned Subordinate Judge, Sangagiri.

For Petitioner : Mr.S.Parthasarathy
(C.R.P.Nos.1299, 1560 Senior counsel
and 1561 of 2006)and for Mr.N.Damodaran
Respondent in Crp.No.1641/06

For Respondent : Mr. S.T.Varatharajalu
(C.R.P.Nos.1299, 1560
and 1561 of 2006 & Petitioner in
C.R.P.No.1641 of 2006)

COMMON ORDER

Invoking the provisions of Article 227 of the Constitution of India these Memorandum of Civil Revision Petitions have been directed against the correctness of the fair and decretal orders dated 21.7.2006 and 30.8.2006 respectively and made in

I.A.Nos.123 and 73 of 2004 and I.A.No.23 of 2005 and I.A.No.124 of 2004 in HMOP No.12 of 2004 on the file of the learned Subordinate Judge, Sangagiri.

2. With the issues in all the Civil Revision Petitions are one and the same and the parties to the Revision Petitions are also one and the same, these Revision Petitions have been clubbed together, heard jointly and disposed of in this common order.

3. For easy reference and for the sake of convenience the Revision Petitioner in C.R.P.Nos.1299, 1560 and 1561 of 2006 may hereinafter be referred to as the petitioner whereas respondent be referred to as the respondent as it is in H.M.O.P.No.12 of 2004 wherever the context so require.

4. Heard Mr.S.Parthasarathy, learned Senior Counsel appearing for the petitioner and Mr.S.T.Varatharajalu, learned counsel appearing for the respondent.

5. It is manifested from the records that the petitioner Mr.M.Gunasekaran had filed a petition in H.M.O.P.No.12 of 2004 under Section 13(1)(1a)(1b) of Hindu Marriage Act, 1955 (in short hereinafter it may be referred to "Act") as against the respondent seeking the relief of divorce dissolving the marriage solemnized between him and the respondent.

6. This petition was contested by the respondent by filing her counter statement. During the pendency of this petition, the respondent came out with a petition in I.A.No.123 of 2004 under Section 24 of the Act claiming Rs.10,000/- per month towards interim maintenance and Rs.20,000/- towards litigation expenses. This petition was resisted by the petitioner Mr.Gunasekaran by filing his counter statement. After hearing both sides, the learned Subordinate Judge had proceeded to allow the petition partly, directing the petitioner to pay sum of Rs.2000/- towards interim maintenance from 6.4.2005 and a sum of Rs.5,500/- towards litigation expenses. Being aggrieved by this order dated 21.7.2006, the petitioner has preferred the Civil Revision Petition in C.R.P.No.1299 of 2006.

7. Likewise, during the pendency of the main petition in HMOP 12 of 2004, the petitioner had chosen to file a petition in I.A.No.73 of 2004 under Order 6 Rule 17 of the Code of Civil Procedure, seeking amendment in the main petition by adding a new Paragraph No.X-A and certain amendment in Paragraph No.XIII. This petition was also contested by the respondent. Ultimately the learned Subordinate Judge, Sangagiri had proceeded to allow this petition partly permitting the petitioner to amend Paragraph No.XIII. Insofar as the petition in respect of inclusion of the new Paragraph X-A is concerned it was dismissed.

8. Challenging the order dated 30.8.2006 the petitioner Mr.M.Gunasekaran had filed the revision in C.R.P.No.1560 of 2006.

9. The petitioner Mr.M.Gunasekarn had also filed another application in I.A.No.23 of 2005 under Section 10 of CPC to stay the further proceeding of the main petition HMOP No.12 of 2004 till the disposal of the petition in HMOP No.103 of 2000 which was filed by the respondent on the file of Subordinate Judge, Tiruppur. This petition was contested by the respondent and subsequently it was dismissed on 30.8.2006. Challenging the correctness of this order dated 30.8.2006 the petitioner has preferred a revision in C.R.P.No.1561 of 2006 on the file of this Court.

10. It is significant note here that the respondent had filed a petition in I.A.No.124 of 2004 under Section 27 of the Act to return her Shreethana properties, Jewelleries along with a cash Rs.1,00,000/- which were said to have been presented by her parents at the time of her marriage. This petition was dismissed by the trial Court on 30.8.2006 against which she had preferred the revision in C.R.P.No.1641 of 2006.

11. The petitioner and the respondent are husband and wife and their marriage was solemnized on 22.11.1996 at Arulmigu Magudeeswaran and Veerananarayana Perumal Thirukovil, Kodumudi, Erode District. At the time of their marriage the petitioner Mr.M.Gunasekaran was employed in Judicial Service at Tiruppur.

12. It is revealed from the averments of the main petition that the petitioner's first wife had died on 6.9.1992 within 49 days of her delivery. It is to be noted that she had delivered a male boy. In order to bring up the child the elders of petitioner's family had decided to marry another woman as his second wife. This fact was well informed to the respondent at the time of their marriage. Thereafter, on account of Matrimonial tiff a fissured crack was developed in their marital relationship which led the petitioner to file the petition in HMOP No.12 of 2004 seeking the degree of divorce and this petition is still pending.

13. During the pendency of this petition the respondent had chosen to file a petition in I.A.No.123 of 2004 under Section 24 of the Act seeking interim maintenance and litigation expense. In the affidavit filed in support of the petition the respondent (petitioner herein) has stated that she had no job and had no source of income to maintain her and therefore she had sought Rs.10,000/- per month towards the monthly maintenance and Rs.20,000/- towards litigation expense. But the learned Subordinate Judge, Sangagiri based on the evidence given by RW1, who is the Principal of Bharathiar Arts and Science College as well as on the basis of Exhibit P1 Salary Certificate and Exs.P2 and P3 respectively and Exhibit P4 appointment order, had decided that the respondent had been working as a lecturer in Bharathiar Arts and Science College and getting a sum of Rs.4,800/- per mensem towards her monthly salary. He had also found that the Exs.P6, P7 and P8 would support his conclusion.

14. As aforesaid, the respondent in her affidavit has stated that she had no job and had no source of income to maintain her. However, the petitioner was able to prove that her contention was false and had established that she had been working as a lecturer and getting a monthly salary of Rs.4800/-.

15. Her statement in her affidavit would go to show that she had buried material facts and had not approached the court with clean hands. Therefore, the decision of the learned trial Judge granting Rs.2,000/- towards monthly interim maintenance and a sum of Rs.5,500/- towards the litigation expenses is absolutely erroneous and liable to be set aside. Accordingly the revision petition in CRP No.1299 of 2006 is deserved to be allowed.

16. With reference to CRP No.1560 of 2006 the petition in I.A.No.73 of 2004 which was filed by the petitioner under Order 6 Rule 17 of CPC to include a new paragraph No.X-A and certain amendments in Paragraph No.13. But the learned Subordinate Judge had erroneously, without considering the intrinsic nature of the application had proceeded to allow the petition partly to make amendments in Paragraph No.XIII dismissing the petition in respect of inclusion of new paragraph No.X-A.

17. It is to be noted that by way of inclusion of new paragraph X-A the structure of Original Petition would not be changed. It is also to be noted that the petitioner is not going to introduce new facts, because the facts which are sought to be brought in by way of inclusion of Paragraph No.X-A are already in existence because the incidents narrated by the petitioner were happened even prior to the filing of main petition as well as after filing of the petition.

18. According to the learned senior counsel Mr.S.Parthasarthy, this would prove that their marriage was

irretrievably broken and it was no longer possible for them to live together. The learned senior counsel had also argued that the additional facts which were subsequent to the filing of the petition would strengthen the case of the petitioner and in such circumstance he has urged to allow the amendment petition by giving liberty to the respondent to file her additional counter statement.

19. This Court has considered the submissions made by both sides and find that the dismissed portion of the order in respect of inclusion of new paragraph No.X-A may be set aside and the petition in I.A.No.73 of 2004 may be allowed in its entirety.

20. The petitioner had filed a petition in I.A.No.23 of 2005 to stay the further proceedings of the main petition in HMOP No.12 of 2004 till the disposal of HMOP No.103 of 2000 which was filed by the respondent. This petition was dismissed by the trial Court.

21. On perusal of the impugned order dated 30.8.2006 and made in I.A.No.23 of 2005 this Court finds that it does not require the interference of this Court. Therefore the Revision Petition in CRP No.1561 of 2006 is disposed of confirming the impugned order dated 30.8.2006 and made in I.A.No.23 of 2005.

22.It is obvious to note here that the respondent had filed a petition in I.A.No.124 of 2004 under Section 27 of the Act to return her Shreethana properties, jeweleries along with a cash of Rs.1,00,000/- which were said to have been presented by her parents.

23.This petition was rightly dismissed by the trial Court with a finding that with regard to the genuineness of the presentation of Shreethana properties, jeweleries along with the cash of Rs.50,000/- towards dowry at the time of her marriage, her parents and other relatives have to be examined at the time of trial and therefore, during the pendency of the main petition in HMOP No.12 of 2004 it might not be proper to adjudicate the issue at this stage.

24. Keeping in view of the above facts, this Court finds that the revision filed by the respondent in CRP No.1641 of 2006 is liable to be dismissed.

25.In the result

CRP No.1299 of 2006

Revision allowed. Impugned order dated 21.07.2006 and made

in I.A.No.123 of 2004 is set aside and the petition in I.A.No.123 of 2004 is dismissed.

CRP No.1560 of 2006

Revision allowed and the dismissed portion of impugned order dated 30.8.2006 and made in I.A.No.73 of 2005 is set aside and the portion in I.A.No.73 of 2004 is allowed in its entirety.

CRP No.1561 of 2006

Revision Petition is disposed of confirming the impugned order dated 30.8.2006 and made in I.A.No.23 of 2005.

CRP No.6041 of 2006

Revision petition dismissed confirming the order dated 30.8.2006 and made in I.A.No.124 of 2004.

However there shall be no order as to costs.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

TO

1 THE SUBORDINATE JUDGE,
SANGAGIRI.

+1cc to MrN.DAMODARAN. Advocate, S.R.No. 6897 IN
CRP.1299,1560 & 1561/06

+1cc to Mr. Advocate, S.R.No.68820/17 IN CRP.1299,1560,
1561 AND 1641/06

C.R.P (PD) Nos.1299,
1560, 1561 and 1641 of 2016

VG II (CO)
TR(20/11/2017)

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