

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2017

CORAM

THE HON'BLE Ms.JUSTICE V.M.VELUMANI

C.R.P.(PD) No.2995 of 2014
and M.P.No.1 of 2014

P.Geethanjali

.. Petitioner

Vs

M.Venkata Saravanan

.. Respondent

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order made in I.A.No.429 of 2013 in H.M.O.P.No.187 of 2011 dated 01.07.2014 passed by Sub Court, Ponnammallee.

For Petitioner : Mr.S.Senthil Nathan

For Respondent : Mr.P.B.Balaji

ORDER

This Civil Revision Petition has been filed to set aside the order made in I.A.No.429 of 2013 in H.M.O.P.No.187 of 2011 dated 01.07.2014 passed by Sub Court, Ponnammallee.

2. The petitioner is the wife and the respondent is the husband. The respondent filed H.M.O.P.No.29 of 2009 against the petitioner for divorce on

the ground of cruelty. The petitioner filed counter statement and is contesting the HMOP. In the HMOP, the trial commenced, the respondent let in evidence and closed his side and HMOP was posted for evidence on behalf of the petitioner. At that stage, the petitioner filed I.A.No.429 of 2013 to return the Jewellery and Sridhana Properties given at the time of marriage and filed the petition under Section 151 of CPC.

3. The respondent filed counter affidavit and submitted that the said application has to be heard and decided along with the HMOP. The petitioner insisted the application being heard separately and orders passed. The learned Judge considering Section 27 of the Hindu Marriage Act held that an order regarding joint property of husband and wife can be passed only in the decree to be passed in main HMOP and also held that HMOP is posted for recording evidence of the petitioner and the HMOP is in the fag end of the enquiry, rejected the application.

4. Against the said order dated 01.07.2014 the present Civil Revision Petition is filed by the petitioner.

5. The learned counsel appearing for the petitioner contended that the learned Judge erred in holding that petitioner filed application under Section

27 of Hindu Marriage Act. In fact the petitioner has filed application only under Section 151 CPC with regard to her Sridhana property, the learned Judge, on misconception that the application filed under Section 27 of the Hindu Marriage Act posted the application along with main HMOP, without deciding the issue in this application.

6. Per contra, the learned counsel appearing for the respondent submitted that trial in the HMOP already commenced, the respondent let in evidence and closed his side and the petitioner has to let in evidence in the main HMOP and only to drag on the proceedings, the petitioner has come out with the present petition.

7. Heard the learned counsel appearing for the petitioner and the respondent and perused the materials available on record.

8. From the materials on record, it is seen that the petitioner has filed an application under Section 151 CPC with regard to return of Jewellery given to her at the time of marriage, she is not claiming return of any joint property of petitioner and respondent. The learned Judge erred in holding that application is filed under Section 27 of Hindu Marriage Act and order with regard to return of Jewelleries can be considered only at the time of passing

decree in HMOP. In view of this error, the order is liable to be set aside. But, taking into consideration, the petitioner has filed the application, when the HMOP was posted for evidence on her behalf, I am not inclined to set aside the order of the learned Judge. In the circumstances, the learned Judge is directed to dispose both application and HMOP within two months from the date of receipt of a copy of this order. It is open to the petitioner to let in evidence with regard to return of Jewellery and Srithana Properties as well as her defence in the HMOP.

9. With the directions, the Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed. No costs.

rna

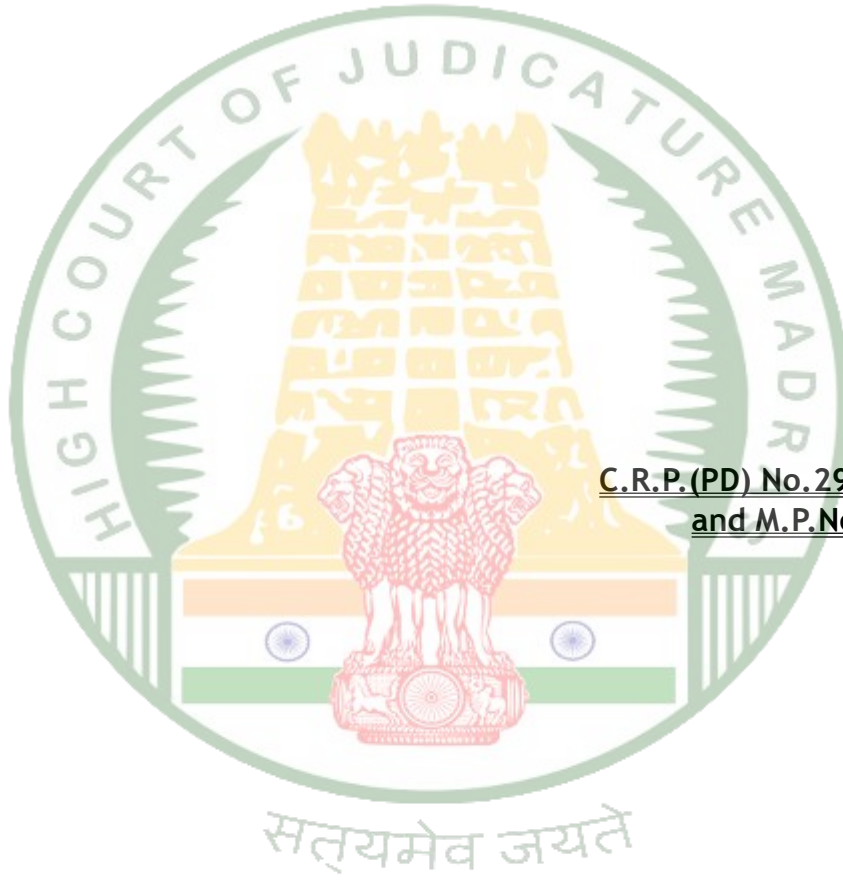
To

The Sub Court,
Poonamallee.

12.10.2017

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V.M.VELUMANI,J
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