

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3911 of 2015
& M.P.No.1 of 2015

Sri Hari

.. Petitioner

Vs.

Vijaya

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 03.12.2013, passed by the learned Subordinate Judge, Ponneri, Thiruvallur District in I.A.No.153 of 2011 in H.M.O.P.No.62 of 2009.

For Petitioner : Mr.A.R.Suresh

For Respondent : No appearance

ORDER

This Civil Revision Petition is filed to set aside the order dated 03.12.2013, passed by the learned Subordinate Judge, Ponneri, Thiruvallur District in I.A.No.153 of 2011 in H.M.O.P.No.62 of 2009.

2.Petitioner / husband is the petitioner and respondent / wife

is the respondent in H.M.O.P.No.62 of 2009 on the file of the Subordinate Judge, Ponneri, Thiruvallur District. The petitioner filed the said H.M.O.P against the respondent for dissolution of marriage on the ground of cruelty. Pending H.M.O.P, he filed I.A.No.153 of 2011 for amendment to substitute the relief as "to nullity the marriage solemnized on 01.09.1999 between the petitioner and the respondent and petition filed under Section 11 of HMACT 1955" **instead of** "dissolving the marriage solemnized on 01.09.1999 between the petitioner and the respondent and instead of petition filed under Section 13(1)(i-a) HMACT 1955".

3.According to the petitioner, at the time of marriage, the respondent informed him that her husband died and she is a widow. Subsequent to filing of the H.M.O.P, he came to know that her husband viz., Karuna Anandh is still alive. The respondent suppressed the said fact that her first husband is alive and played fraud on the petitioner and got married with him.

4.The respondent filed counter affidavit and submitted that only to avoid payment of maintenance, the petitioner has come out with the present petition and prayed for dismissal of the application.

5.The learned Judge, considering the averments made in the affidavit, counter affidavit and the judgment reported in **2011 6 MLJ 301**, relied on by the parties dismissed the application.

6.Against the said order dated 03.12.2013, made in I.A.No.153 of 2011 in H.M.O.P.No.62 of 2009, the petitioner has come out with the present Civil Revision Petition.

7.Though the respondent entered appearance through counsel, there is no representation on her behalf.

8.Heard the learned counsel for the petitioner and perused the materials available on record and judgment relied on by the parties.

9.The petitioner has sought for dissolution of the marriage on the ground of cruelty. Now the petitioner is seeking dissolution that marriage between the petitioner and respondent is nullity on the ground that first husband of the respondent, viz., Karuna Anandh is still alive and the respondent got married with the petitioner suppressing the said fact. The relief now sought for is based on different cause of action and petitioner is introducing a new case

and seeking a different relief. The petitioner is not entitled for amendment as he is introducing a new cause of action and entirely different case. It is open to the petitioner to withdraw the H.M.O.P with liberty to raise all the issues by filing a fresh petition for dissolution of marriage, if he is so advised or so desires.

10. With the above direction, this Civil Revision Petition is disposed of. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

12.12.2017

Index: Yes/No

Internet: Yes/No

gsa

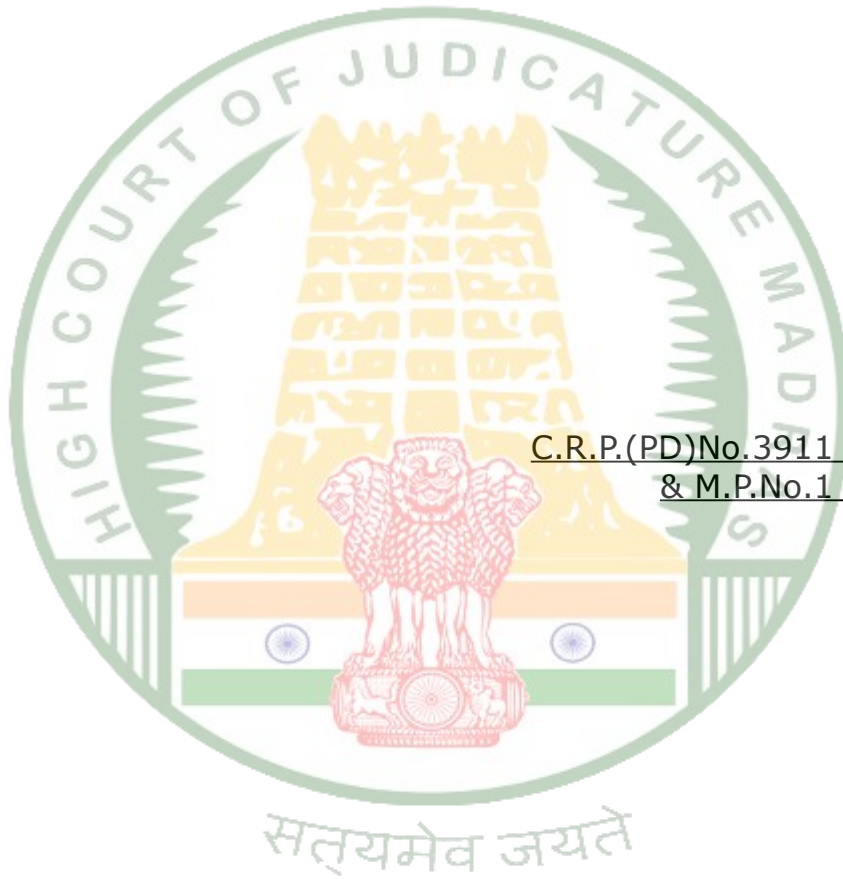
To

The Subordinate Judge,
Ponneri,
Thiruvallur District

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V.M.VELUMANI,J.

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