

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.02.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.2009 of 2013
and
M.P.No.1 of 2013**

G.V.Muthukumar

.. Petitioner

Vs.

A.Akilandeswari

..Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order of the Subordinate Judge's Court, Gopichettipalayam, dated 11.01.2013 in I.A.No.40 of 2012 in H.M.O.P.No.12 of 2011.

For Petitioner : Mr.K.Rajamanickam

For Respondent : Mr.S.Venkidusamy

ORDER

This Revision is directed against an order dated 11.01.2013 made by the learned Subordinate Judge, Gopichettipalayam in

I.A.No.40 of 2012 in H.M.O.P.No.12 of 2011. The said H.M.O.P. is found filed by the revision petitioner / husband seeking for dissolution of his marriage with respondent/wife on the grounds of cruelty and desertion.

2.In the said H.M.O.P. petition the revision petitioner filed an interlocutory application in I.A.No.40 of 2012 seeking for an amendment to include an additional ground of divorce for dissolving his marriage viz adultery. According to the revision petitioner, his wife, the respondent herein was employed in Railway service and lived in adultery with her office senior. Therefore he sought dissolution of his marriage with the respondent herein on the ground of adultery also.

3.Whereas, according to the revision petitioner, the learned Trial Judge dismissed the said application on misappraisal of fact and law vide Impugned order dated 11.01.2013. The same is under challenge in this civil revision petition.

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4.I heard Mr.K.Rajamanickam, learned counsel for the petitioner and Mr.S.Venkidusamy, learned counsel for the respondent and perused the entire materials available on record.

5.The learned counsel for the revision petitioner would submit that the finding of the learned trial judge that the pleading with regard to the allegation of adultery ought to have made at the 1st instance i.e at the time of institution of the above H.M.O.P. petition itself is erroneous.

6.He would further contend that the parties are entitled to amend their pleadings as and when required with the leave of the Court. Whereas, the learned Judge by adopting a technical approach has dismissed the revision petitioner's application for amendment to include the ground of adultery also as one of the ground for divorce.

7.According to the learned counsel for the revision petitioner the amendment sought evolved out of a subsequent event of the respondent's employment secured after institution of the above H.M.O.P. Therefore it is his contention that the amendment is liable to be allowed as such enabling the petitioner to pray for dissolution of marriage in the ground of adultery also.

8.Per contra, the learned counsel for the respondent/wife would

submit that the application for amendment made by revision petitioner was solely indented to disrepute the respondent's name and conduct. It is also his contention that by way of roping the superior officers of the respondent, the application was indented to make her jobless.

9.Hearing upon the rival submissions and on perusal of the impugned order, it is not in dispute that the above H.M.O.P. was filed in the month of January 2011 seeking dissolution of marriage on the ground of cruelty and desertion. It is further seen that the respondent/ wife has responded the above H.M.O.P. petition by filing a counter dated 19.08.2011 by denying the allegations of cruelty and desertion projected against her. It is significant to note from her counter dated 19.08.2011 that she has specifically alleged that the revision petitioner had an illicit relationship with one Tamil Priya and revision petitioner was found sharing his bed with said Tamil Priya.

10.In the said circumstance it is quiet common that the revision petitioner will have certainly countered the said allegation by pleading that the respondent had an illicit relation with her department superior. It is further found that the revision petitioner has also filed a rejoinder statement to the respondent's counter wherein absolutely

there is no say as to respondent's alleged illicit relation.

11. But it is the case of the revision petitioner is that the respondent got illicit intimacy with her superior and was living in adultery for over one year.

12. Therefore it is obvious to see that the allegation of adultery projected against the respondent is to tarnish her image besides to harass her.

13. More so, it is noteworthy to state that the respondent had secured the particular job only five months prior to the institution of the main H.M.O.P and thus the amendment sought by the revision petitioner is found false and intended to harass and disrepute her.

14. It is needless to say that the revision petitioner ought to have pleaded at the first instance or in his rejoinder to counter. Whereas having not raised any allegations or detailing his pleading with regard to alleged adultery said to have living for over one year, after long time cannot develop a new story by way of amendment and there can be no doubt that such story is an afterthought developed for the best

reasons known to the revision petitioner.

15. For the foregoing reasons, there is no merit in the civil revision petition and the same is hereby dismissed. No costs. Consequently, connected miscellaneous petition is closed.

03.02.2017

Index:Yes
Internet:Yes
Note:Issue order copy on 12.12.2018
vs

To

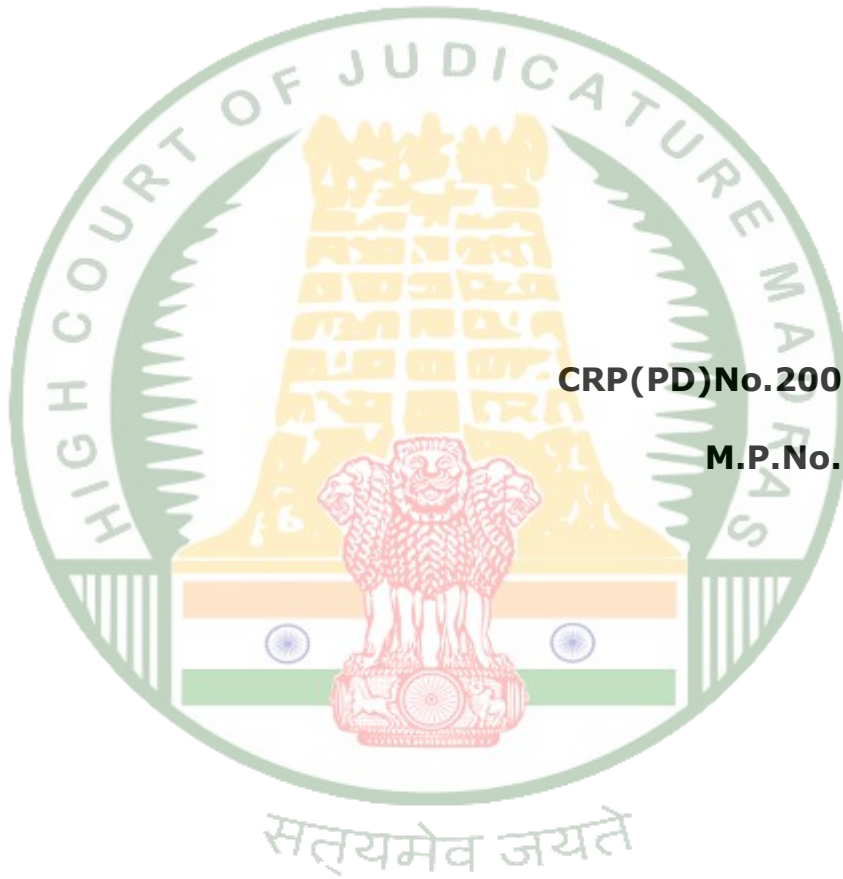
The Subordinate Judge,
Gopichettipalayam.



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M.V.MURALIDARAN, J.

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