



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 02.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.210 of 2017
and C.M.P (MD) No.938 of 2017

Shanmuga Pandi

.. Petitioner/Petitioner

-vs-

Tamil Selvi (died)

.. Respondent

PRAYER:- Civil Revision Petition is filed under Article 227 of the Constitution of India, to strike down the proceedings in H.M.O.P.No.124 of 2013 on the file of the Sub Court, Sankarankovil.

For Petitioner

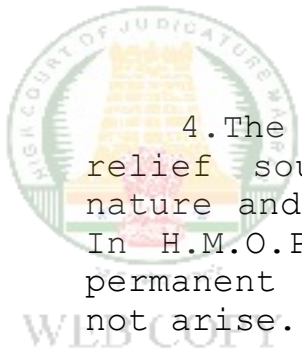
: Mr.S.Subbiah

ORDER

The petitioner has filed the above Civil Revision Petition to strike down the proceedings in H.M.O.P.No.124 of 2013 on the file of the Sub Court, Sankarankovil.

2.The petitioner filed a petition in H.M.O.P.No.124 of 2013 against the respondent/wife for divorce. Pending H.M.O.P, on 08.07.2015 interim maintenance was ordered to be paid to the minor children by the learned Sub Judge, Sankarankovil. Subsequently, pending H.M.O.P, the respondent/wife died on 28.09.2016. Both the counsel for the petitioner as well as the counsel for the respondent filed memo on 20.10.2016. The petitioner in the memo stated that he is not pressing the H.M.O.P, in view of the death of his wife/respondent in H.M.O.P.No.124 of 2013.

3.The grievance of the petitioner is that the learned Judge instead of dismissing the H.M.O.P as not pressed or abated, directed the legal representatives of the deceased/wife to be brought on record. The father-in-law of the petitioner filed an application under Order 22 Rule 4 of the Code of Civil Procedure for impleading the minor children of the petitioner as well as the respondent in H.M.O.P. In view of the said application, the learned Judge adjourned the H.M.O.P.No.124 of 2013 as petition filed under Order 22 Rule 4 of the Code of Civil Procedure has been filed and is pending.



4.The learned counsel for the petitioner submitted that the relief sought for against the respondent/wife is personal in nature and H.M.O.P came to an end on the death of the respondent. In H.M.O.P.No.124 of 2013 filed by the petitioner, granting of permanent alimony under Section 24 of the Hindu Marriage Act does not arise.

5.The learned counsel for the petitioner further submitted that the father-in-law of the petitioner gave complaint against the petitioner alleging that only at the instigation of the petitioner, the respondent/wife committed suicide. The petitioner is innocent and he has not committed any offence as alleged by the father-in-law. The petitioner is ready and willing to maintain the minor children and now the petitioner will continue to pay the interim maintenance as ordered by the learned Judge. The minor children cannot be impleaded in H.M.O.P.No.124 of 2013 filed for divorce and they are not entitled to any claim in H.M.O.P.No.124 of 2013.

6.Heard the learned counsel for the petitioner and perused the materials available on record.

7.The contention made by the learned counsel for the petitioner has considerable force. H.M.O.P.No.124 of 2013 filed by the petitioner against his wife does not survive on the death of the respondent/wife and liable to be dismissed. In the circumstances, H.M.O.P.No.124 of 2013 is strike off from the file and the petitioner is directed to pay the interim maintenance as ordered by the learned Sub Judge, Sankarankovil, dated 08.07.2015. It is open to the next friend of the minors to take appropriate proceedings claiming enhanced maintenance for the minor children from the petitioner.

8.With the above observations, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(c)

/True Copy/

Sub Assistant Registrar

To
The Subordinate Judge, Sankarankovil.

+1cc to MR.S.Subbiah, Advocate SR.No.6385

ps
sm:MR:10.2.2017:2P/3C