



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.02.2017

CORAM:

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) Nos.251 to 253 of 2017 (NPD)

and

C.M.P. (MD) Nos.1147, 1149 & 1151 of 2017

1.B.Jeyalakshmi
2.B.Priyadarshni
3.B.Raguram
4.Minor.B.Sanjaykannan ... Petitioners in all the C.R.Ps./
Respondents 1 to 4 /
Respondents 1 to 4 / Plaintiffs
(Represented through his mother/
next friend 1st petitioner/
1st respondent Tmt.B.Jeyalakshmi)

Vs

1.Muthumari
2.Minor. Venkateswaran ... Respondents 1 & 2 / Respondents 1&2 /
Petitioners/ Proposed Defendants 10 & 11
(Represented by his
mother/next friend
1st respondent/1st petitioner)

3.P.Muthuraman
4.P.Rajaraman
5.S.Shanmugalakshmi
6.P. Meenakshi
7.P.Muthukrishnan
8.P.Natarajan
9.P.Parvathy
10.M.Subramanian
11.S.Chandrakumar ... Respondents 3 to 11 in all CRPs/
Respondents 3 to 11 /
Respondents 5 to 13/ Defendants 1 to 9

PRAYER in all the C.R.Ps.: Civil Revision Petitions are filed under Article 227 of Constitution of India, to order to allow the civil revision petitions by setting aside the fair and decreetal order passed in I.A.Nos.622 & 623 of 2015 in I.A.Nos.426,427 of 2015 in O.S.No.66/2015, I.A.No.621 of 2015 in O.S.No.66/15 dated 25.06.2015 on the file of the V Additional District Judge, Madurai, respectively.



For Petitioners : Mr. M. Ponniah

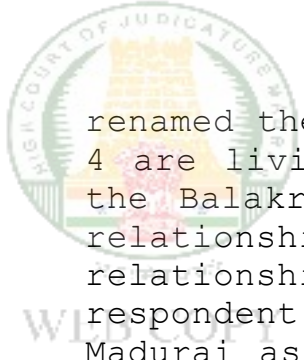
COMMON ORDER

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The issue involved in all the CRPs are interlinked and hence, all CRPs are disposed of by common order.

2.The petitioners are the plaintiffs in the suit. The petitioners filed suit in O.S.No.66 of 2015 before the learned V Additional District Court, Madurai for declaration to declare the petitioners are the absolute joint owners of the first item of the plaint schedule property and for injunction restraining the respondents 3 to 11 with regard to items 1 & 2 of the plaint schedule property and for a direction to divide items 3 & 4 of plaint schedule properties into 8 equal shares by metes and bounds and to allot 1/8th share to the petitioners. The petitioners also filed two interlocutory applications in I.A.No.426 of 2015 for temporary injunction restraining the respondents 3 to 9 from any way alienate the 3 & 4 items of the property till the disposal of the suit and I.A.No.427 of 2015 for temporary injunction restraining the respondents 3 to 11 from any way interfering with their possession and enjoyment of the items 1 & 2 of the petition mentioned properties.

3.The respondents 3 ,4 & 7 filed written statement and counter affidavit and contesting the suit. The respondents 1 & 2 filed three applications in I.A.Nos.621 to 623 of 2015 to implead them as defendants 10 & 11 and respondents 8 & 9 in I.A.No.426 of 2015 and as respondents 10 & 11 in I.A.No.427 of 2015. According to the respondents 1 & 2 the first petitioner, W/o.Balakrishnan left the matrimonial home along with jewels and cash and other ornaments. The said Balakrishnan gave a complaint before the concerned police and on enquiry it was found that the petitioners 1 & 2 were converted as Muslim and following Islam through one Abdullah and were living at Kombai of Madharasha and they refused to live with Balakrishnan. The Balakrishnan filed Cr.M.P.No.793 of 2010 before the learned Judicial Magistrate, No.II, Madurai. In that application, the petitioners 1 & 2 appeared before the learned Judicial Magistrate No.II, Madurai and admitted that they were converted to Muslim and following Islam from the year 2005 and were not willing to go with Balakrishnan. The petitioners 1 & 2 also changed their name as Jaina and Sara Fathima and second petitioner married to one Nagore Haniffa. On their statement, the learned Judicial Magistrate No.II, Madurai closed the Cr.M.P.No.793 of 2010 filed by Balakrishnan stating that the petitioners 1 & 2 cannot be compelled to go and live with Balakrishnan. Since second petitioner was major. Subsequently, first petitioner taken the petitioners 3 & 4 along with her and



renamed them as Rahman and Babu respectively. The petitioners 1 to 4 are living as Muslims. In the circumstances, attempts taken by the Balakrishnan ended in vain and therefore, he terminated his relationship with first petitioner after terminating the relationship on 12.12.2010, the said Balakrishnan married first respondent at Salaikarai Muthiah Temple, Thuvaraman Village, Madurai as per Hindu Rites and customs. The second respondent was born in the wedlock on 08.09.2011. Therefore, she filed applications in I.A.Nos.621 to 623 of 2015 to implead them as defendants 10 & 11 and respondents 8 & 9 in I.A.No.426 of 2015 and as respondents 10 & 11 in I.A.No.427 of 2015.

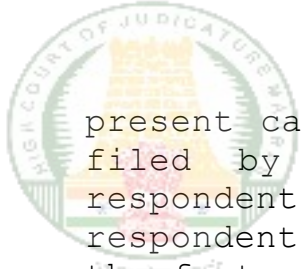
4.The petitioners 1 to 4 filed counter and denied all the averments made by the respondents 1 & 2 and stated that only the respondents 7 & 8 were created problem in the year 2010 and there was no problem with the petitioner's husband Balakrishnan. She never converted to Islam and also she did not convert her children petitioners 2 to 4 as Muslim. There was no marriage took place between Balakrishnan with first respondent. Only with an intention to grab movable and immovable property of Balakrishnan, the respondents 7 & 8 have taken all the original documents which were kept by Balakrishnan. The first petitioner's husband did not terminate the marriage and married the first respondent. The first petitioner denied that the second respondent was born in the wedlock.

5.Before the learned Judge no oral and documentary evidence was let in by both parties.

6.The learned Judge considering the averments made in the affidavit and counter affidavit and documents filed in I.A.No.639 of 2015 by the respondents 1 & 2 and the caveat petition filed by the petitioner anticipating suit from first respondent and the fact that the respondents 1 & 2 are living in a portion of the suit property, allowed all the three applications filed by the respondents 1 & 2.

7.Against the three separate orders, the petitioners have filed these present Civil Revision Petitions.

8.The learned counsel for the petitioners submitted that the learned Judge without considering the contention of the petitioners allowed the applications. The documents filed by the petitioners were not considered by the learned Judge and the learned Judge based on the documents filed by the respondents 1 & 2 allowed applications. The documents 6 & 7 are the evidence given before the Judicial Magistrate II, Madurai by the first petitioner and the same cannot be considered in the present proceedings. The learned Judge is not correct in applying the provisions 2(S) of the Protection of Women from Domestic Violence Act 2005 as the provisions of said Act is not applicable to the facts of the



present case. The learned Judge without considering the documents filed by the petitioners, has given a finding that first respondent was married to deceased Balakrishnan and the second respondent was born in the wedlock and said finding is contrary to the facts and law. In the circumstances, the petitioners 1 & 2 are not necessary parties to the suit filed by the petitioners and prayed for allowing the Civil Revision Petitions.

9.I have heard the learned counsel appearing for the petitioners and also perused all the materials available on record.

10.The petitioners filed suit claiming relief of declaration on the ground that she is the wife of Balakrishnan and petitioners 2 to 4 are their children. The respondents 1 & 2 have come out with the present applications for impleading them as defendants and the respondents in the suit and application filed for injunction stating that the first respondent left the matrimonial home and said Balakrishnan taken steps to secure the first petitioner and subsequently initiated criminal proceedings against the petitioners 1 & 2 and she categorically stated that she will not live with Balakrishnan as she has converted herself into Islam and living in Madharasha. In the circumstances, the contention of the respondents 1 & 2 that Balakrishnan terminated the marriage with first petitioner and married the first respondent and second respondent is born in the wedlock has considerable force. On this plea, the respondents 1 & 2 have filed application for impleading themselves as party defendants and respondents in the suit and I.A.

11.From the materials, it is seen that the learned Judge has concluded that first respondent and Balakrishnan were living together as husband and wife in a portion of the suit property and second respondent was born in the wedlock. The learned Judge also took note of the fact that the first petitioner herself admitted that respondents 1 & 2 are living in a portion of the suit property, allowed the applications holding that the respondents 1 & 2 are necessary and proper parties to the suit and applications filed by the petitioners. It is pertinent to note that first petitioner filed caveat against the first respondent and anticipating suit from her.

12.From this facts it is clear that respondents 1 & 2 are proper and necessary parties to the suit and applications. The learned Judge has considering all these facts and by elaborate order allowed the applications in I.A.Nos.622, 623 & 621 of 2015 filed by the respondents 1 & 2 permitting the respondents 1 & 2 as party defendants in the suit and as respondents in the applications filed by the petitioner. In the circumstances, there is no illegality or irregularity warranting interference by this Court.



13. In the result, all the Civil Revision Petitions are dismissed. No cost. Consequently, connected miscellaneous petitions are also dismissed.

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/True copy/

Sd/-

Assistant Registrar(CO)

Sub Assistant Registrar

To

The V Additional District Court,
Madurai.

+1 cc to M/s.M.Ponniah, Advocate in SR.No.7294

am

CSL/BS/16.03.2017 :5P/3C

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