



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.06.2017

CORAM:

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THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.R.P. (MD) No. 905 of 2017

and

CMP (MD) No. 3970 of 2017

Krishna Kumar

...Petitioner

-Vs-

Narmadha

...Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the Order and decretal order passed in I.A.No.20 of 2017 in H.M.O.P.No.57 of 2016 on the file of Subordinate Judge, Virudhunagar dated 06.02.2017.

For Petitioner : Mr.M.Ashok Kumar

For Respondent : Mr.G.Mariappan

ORDER

This revision petition is filed against the dismissal of the application filed by the respondent in H.M.O.P.No.57 of 2016 for issuance of witness summons to the two witnesses stated in the petition before the cross-examination of PW1 in the main H.M.O.P. H.M.O.P., has been filed to declare the marriage registered on 20.08.2015 as null and void. In the course of trial the respondent herein has been examined as PW1.

2.The present application has been filed by the respondent/husband to examine the mother of the respondent herein who signed as witness to the marriage registration and also her relative before the cross examination of PW1. Further the husband also taken out an application for production of certain documents relating to the wife Narmadha, such as her Horoscope, Passport, Visa and marriage invitation of her elder brother namely, Karthikeyan, etc., The Trial Court after considering the rival submissions has held that examination of above said witnesses before the court is not sustainable, since, the examination of PW1 is not sustainable, since, the respondent herein who has filed H.M.O.P.No.57 of 2016 to declare the alleged marriage as null and void, has to prove the same and



the petitioner herein need not examine witnesses therefor and it is suffice for the petitioner to examine witnesses to prove his case for restitution of conjugal rights alone. The counsel for the respondent submitted that mother of the respondent would be examined as one of the witnesses on behalf of the respondent.

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3.If the witnesses sought to be examined are not examined by the respondent, the revision petitioner can invoke under Order 16 Rule 14 of CPC where the Court can suo motu summon any person including party to the proceedings. However, there is no legal bar for any party to the proceedings to seek the indulgence of the Court to invoke its power under Order 16 Rule 14 of CPC. Such application has to be considered as reminder to the Court, however, if the Court does not invoke its power under Order 16 Rule 14 on his own (suo motu), then the stage of requesting the Court by the parties to remind the Court to exercise the power under Order 16 Rule 14 shall arise only after parties complete the examination of their witnesses and neither of the party summon the said witness to give evidence. It is the prerogative of the Court to refuse or entertain the request as the Court deems fit. Order 16 Rule 1, Order 16 Rule 14 and Order 16 Rule 21 are to be read harmoniously, if so read, it will make clear that any person either party to the proceedings or not can be summoned and examined, provided he is a necessary witness relevant to the list.

4.Recording the submission of the counsel for the respondent that the mother of the petitioner in H.M.O.P.No.57 of 2016 is going to be examined as one of the witnesses, revision petition dismissed. There is no necessity to pass any order in this revision petition.

5.With the above observation this Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar

To

The Subordinate Judge, Virudhunagar.

+One cc to Mr.M.Ashok Kumar, Advocate, SR.No.61304

+One cc to Mr.G.Mariappan, Advocate, SR.No.61100

mm/cmr

RL/4C/2P/JC/SAR1/2/8/2017

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