



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.11.2017

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(PD)(MD)No.1945 of 2016
and
CMP(MD)No.9194 of 2016

A.Alexan Jose ... Petitioner/Petitioner/Defendant
vs.
A.Praisan Lino
Minor Plaintiff rep by his mother
S.Redlin Gold Sherin ... Respondent/Respondent/Plaintiff

Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.768 of 2012 in O.S.No.272 of 2012 on the file of the Sub Court, Padmanabapuram dated 23.03.2016.

For Petitioner : Mr.T.Arul
For Respondent : Mr.S.Ramakrishnan

ORDER

This Civil Revision Petition has been filed against the dismissal of I.A.No.768 of 2012 dated 23.03.2016, filed for rejection of plaint in O.S.No.272 of 2012 on the file of the Sub Court, Padmanabapuram.

2.Learned counsel for the petitioner would submit that the marriage between the petitioner and respondent's mother took place on 28.06.1999 as per Christian rites and out of the wedlock, the respondent was born on 14.06.2000 and due to misunderstanding, the petitioner got separated from the mother of the minor plaintiff on 01.05.2004. The minor plaintiff's mother and the revision petitioner executed a mutual agreement for divorce on 02.06.2006 with certain terms and conditions. As per the terms of the agreement, the petitioner paid a sum of Rs.1,00,000/- as one time maintenance for the minor plaintiff to be maintained by his mother and as per the terms, no claim of maintenance should be made by the plaintiff or his mother. Subsequently, divorce by mutual consent was filed before the District Court, Kanyakumari at Nagercoil, in IDOP.No.102 of 2006 and the same was allowed on 20.01.2007. Hence, the petitioner filed the present interlocutory application for rejection of plaint stating that the suit as well as I.A.No.652 of 2012 seeking attachment before judgment are nothing but abuse of process of law. However, the learned Trial Judge dismissed the said application. Aggrieved against the said order, the petitioner has filed the present revision petition.



3. Learned counsel for the petitioner reiterated the above stated case of the petitioner and submitted that the marital relationship between the petitioner and the mother of the respondent had already been put to an end by a decree of divorce passed in IDOP.No.102 of 2006 dated 20.01.2007 before the District Judge, Kanyakumari at Nagercoil and the same has been suppressed in the present suit in O.S.No.272 of 2012. He would also submit that the petitioner and the respondent's mother are living separately from 2004 onwards and the cause of action alleged in the plaint that the petitioner deserted the respondent and the respondent's mother in 2011 is not correct. The petitioner was not allowed to meet the respondent/son after the decree of divorce and the petitioner considering the welfare of the child did not interfere with the bringing up of the child as the respondent's mother is economically sound and has sufficient means. The petitioner in fact had been working in the company of the respondent's mother's father (erstwhile father-in-law) in Muscut.

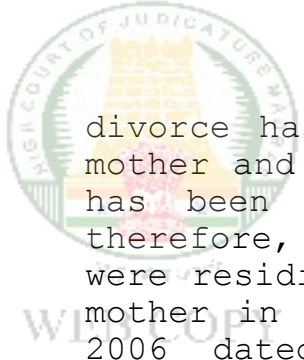
4. Adding further, learned counsel for the petitioner contended that admittedly, in paragraph 5 of the plaint, the respondent's mother has stated that from 2006 onwards, the respondent and herself are living in the respondent's grandfather's house and the date of desertion as per the plaint is 26.09.2011.

5. Learned counsel for the petitioner would further contend that the respondent's mother had married one Nixon Danial for the second time on 24.10.2011 and the marriage had taken place at full Gospel Pandecostal church, Mekkaamandapam and now the respondent's mother along with her husband Nixon Danial are members of C.S.I District Church, Seynamvilai vide membership No.169 of the said Church. Further, as per the terms of agreement, all money settlement has been made and the present suit has been filed only to spoil the reputation of the petitioner.

6. Learned counsel for the respondent would draw the attention of this Court to Section 44 of the Indian Divorce Act, wherein, it has been stated that even after the decree of dissolution or nullity of marriage, the respondent is entitled to file an application in respect of custody, maintenance and education of the minor children and accordingly, she has filed the present suit for recovery of arrears of maintenance and therefore, the order passed by the learned Judge declining to reject the plaint is valid and does not warrant interference.

7. Heard the learned counsel for the petitioner as well as respondent and perused the materials available on record.

8. Perusal of the records shows that factum of divorce has not been mentioned in the plaint filed by the minor plaintiff/respondent and it has been stated as if the petitioner has deserted respondent's mother from 2011, whereas, the mutual agreement for



divorce has been executed between the petitioner and respondent's mother and as per the terms of agreement, divorce on mutual consent has been granted in IDOP.No.102 of 2006 dated 20.01.2007 and therefore, the averments that the petitioner and respondent's mother were residing together and the petitioner deserted the respondent's mother in 2011 are not true. The order passed in IDOP.No.102 of 2006 dated 20.01.2007 clearly shows that the petitioner and respondent's mother were living separately from 01.05.2004 onwards and it is specifically stated that the financial claims between them settled and a sum of Rs.1,00,000/- was received by the respondent's mother to maintain the respondent/minor child.

9.Perusal of the records further shows that in the present suit, the respondent's mother has not even disclosed about the dissolution of marriage between her and the petitioner. There has been a valid mutual agreement for divorce between the petitioner and respondent's mother and as per the terms of agreement, divorce on mutual consent has been granted and it is the specific order of the Court that a sum of Rs.1,00,000/- has been received by the respondent's mother for maintenance of the child. Now, the petitioner has settled in abroad with his wife.

10.In my considered opinion, the present suit filed for recovery of arrears of maintenance by the minor plaintiff represented by his mother, is a clear abuse of process of the Court and the impugned order passed by the learned Judge is erroneous as the learned Judge ought to have considered the decree of mutual divorce passed by the District Judge, Kanyakumari, in IDOP.No.102 of 2006 dated 20.01.2007, wherein, it has been stated that a sum of Rs.1,00,000/- has been received by the respondent's mother for maintenance of the child and further, the learned Judge ought to have considered that the factum of divorce has not been set out in the plaint and the order of divorce would disclose that the petitioner and respondent's mother has been living separately from 01.05.2004 onwards and therefore, the cause of action shown in the plaint is erroneous. Therefore, impugned order passed in I.A.No.768 of 2012 in O.S.No.272 of 2012 on the file of the Sub Court, Padmanabapuram dated 23.03.2016 is set aside.

Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To
The Subordinate Judge, Padmanabapuram.

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