

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.02.2018

CORAM

THE HON'BLE Mr.JUSTICE A.SELVAM

AND

THE HON'BLE Mr.JUSTICE P.KALAIYARASAN

C.M.A.No.23 of 2018

D.Prasad

... Appellant

Vs

1.D.Esther

2.John alias Appadurai

... Respondent

Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984, against the order dated 22.06.2016 passed by the I Additional Family Court, Chennai, in I.D.O.P.No.502 of 2013.

For Petitioner : Ms.M.Ramya

For Respondents : Mr.L.Prakash for R1

J U D G M E N T

[Judgment of the Court was delivered by A.SELVAM., J.]

This Civil Miscellaneous Appeal is directed against the order dated 22.06.2016, passed in I.D.O.P.No.502 of 2013, by the I Additional Family Court at Chennai.

2.The appellant herein, as petitioner, has filed I.D.O.P.No. 502 of 2013, on the file of the trial Court, wherein, the present respondents have been arrayed as respondents.

3.The main contention putforth on the side of the petitioner is that the respondent is the legally wedded wife of the petitioner and now she has been living an adulterous life with the second respondent.

4.During pendency of the same, a batch of compromise memos have been filed in various original petitions including in I.D.O.P.No.502 of 2013.

5.The trial Court, has refused to record compromise and ultimately, dismissed all original petitions including I.D.O.P.No.502 of 2013, by way of passing a common order and the same is being challenged in the present Civil Miscellaneous Appeal.

6.As set out earlier, I.D.O.P.No.502 of 2013 has been filed for getting a decree of divorce on the ground of adultery. During pendency of the same, a separate memo has been filed. The trial Court, has rejected the said memo. After rejecting the said memo, the trial Court, has erroneously dismissed I.D.O.P.No.502 of 2013. The trial Court ought to have proceed trial in I.D.O.P.No.502 of 2013.

7.Since the trial Court has dismissed I.D.O.P.No.502 of 2013, even without conducting trial, this Court is of the view that the order passed in I.D.O.P.No.502 of 2013 by the trial Court is liable to be set aside and the matter is liable to be remitted to the file of the trial Court.

In fine, this Civil Miscellaneous Appeal is allowed without costs. The order passed in I.D.O.P.No.502 of 2013 by the trial Court is set aside and I.D.O.P.No.502 of 2013 is remitted to the file of the trial Court. The trial Court is strictly directed to conduct a full fledged trial in I.D.O.P.No.502 of 2013, after giving proper opportunities to both parties and also directed to dispose of I.D.O.P.No.502 of 2013 before the end of April 2018 and report the same to the Registry without fail.

Sd/-

Assistant Registrar(CS-iv)

//True Copy//

Sub Assistant Registrar

gya

To

The I Additional Family Court,
Chennai.

+1cc to Mr.N.RAMESH, Advocate, S.R.No. 12090
+1cc to Mr.S.VENGATESAN, Advocate, S.R.No. 12322

C.M.A.No.23 of 2018

KS (CO)

TR(01/03/2018)