

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:07.02.2018

CORAM

THE HON'BLE MR. JUSTICE A.SELVAM
AND
THE HON'BLE MR. JUSTICE P.KALAIYARASAN

C.M.A.NO.67 OF 2018

AND

C.M.P.NO.947 OF 2018

M.Gajalakshmi ... Appellant/Petitioner

Vs

A.Murugesan ... Respondent/Respondent

Civil Miscellaneous Appeal preferred against the order dated 01.11.2017, passed in I.A.No.218 of 2013 in O.P.No.2119 of 2012, by the V Additional Family Court, Chennai.

For Appellant ... Mr.P.V.Jayakumari

For Respondent ... Mr.D.Ramalingam

JUDGMENT

(Judgment of the Court was delivered by A.SELVAM, J.)

This Civil Miscellaneous Appeal has been directed against the order dated 01.11.2017, passed in I.A.No.218 of 2013 in O.P.No.2119 of 2013, by the V Additional Family Court, Chennai.

2.The appellant herein, as petitioner, has filed O.P.No.2119 of 2012, on the file of the trial Court, praying to pass a decree of restitution of conjugal rights, wherein, the present respondent has been arrayed as sole respondent.

3.During pendency of the same, the petitioner has filed a petition in I.A.No.218 of 2013, under Section 24 of the Hindu Marriage Act, 1955, praying to pass an order of interim monthly maintenance. The trial Court, after considering the contentions put forth on either side, has dismissed I.A.No.218 of 2013, by way of passing the impugned order and the same is being challenged in the present Civil Miscellaneous Appeal.

4.The learned counsel appearing for the appellant/petitioner(wife) has contended to the effect that O.P.No.2119 of 2012 has been filed under Section 9 of the Hindu Marriage Act, 1955, praying to pass a decree of restitution of conjugal rights, wherein, the present respondent has been shown as respondent.

5.During pendency of the same, I.A.No.218 of 2013 has been filed under Section 24 of the Hindu Marriage Act, 1955, praying to pass an order of interim monthly maintenance. But the trial Court, without considering the averments made in I.A.No.218 of 2013, has erroneously dismissed the same and therefore, the impugned order passed by the trial Court is liable to be set aside and the respondent may be directed to pay the interim monthly maintenance.

6.The learned counsel appearing for the respondent (husband) has contended to the effect that the respondent is not the husband of the petitioner and to that effect a detailed counter has been filed. Considering the stand taken on the side of the respondent(husband), the trial Court has rightly dismissed I.A.No.218 of 2013 and therefore, the impugned order passed by the trial Court does not require any interference.

7.Considering the stand taken on the side of the respondent/husband and also considering the fact that a detailed counter has been filed in I.A.No.218 of 2013 and also counter has been filed in O.P.No.2119 of 2012, this Court is of the view that since the marital status of the petitioner is in dispute, it is not possible to direct the respondent to give interim monthly maintenance and the trial Court, after considering the rival contentions put forth on either side, has rightly dismissed I.A.No.218 of 2013 and in view of the discussion made earlier, this Court has not found any acceptable force in the contention put forth on the side of the appellant.

In fine, this Civil Miscellaneous Appeal is dismissed without costs. The order passed in I.A.No.218 of 2013 in O.P.No.2119 of 2012, by the trial Court, is confirmed. The trial Court is directed to dispose of O.P.No.2119 of 2012 before the end of April 2018 and report the same to the Registry without fail. Connected miscellaneous petition is dismissed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

msk

To

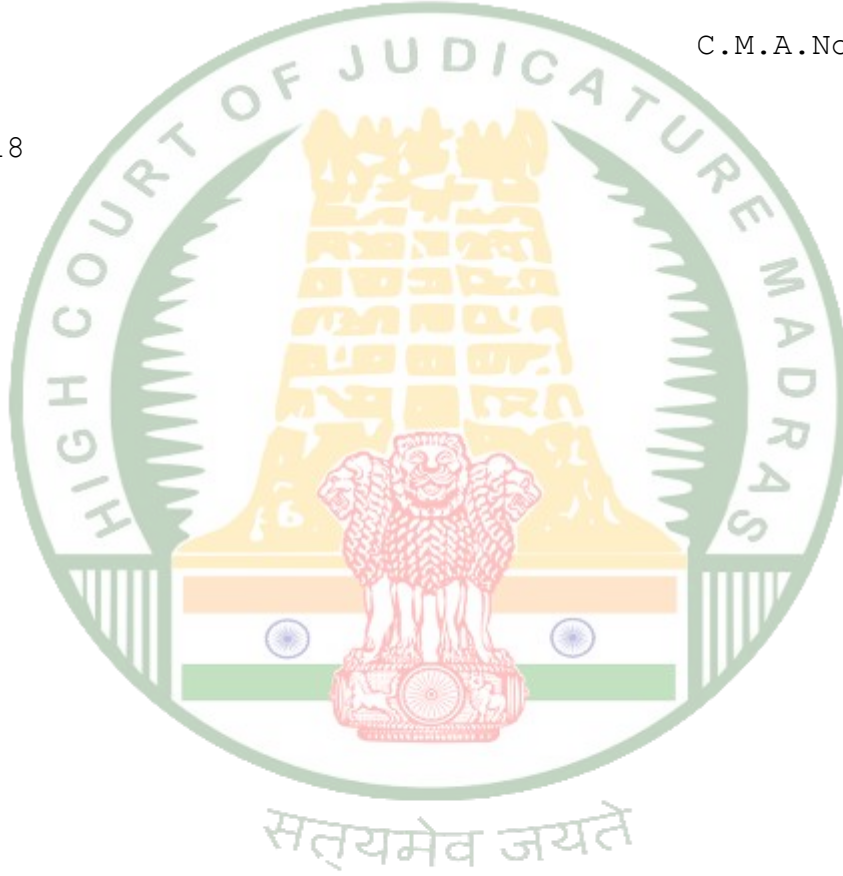
1. The V Additional Family Court,
Chennai.
2. The Section Officer,
Judicial Department,
High Court, Madras

+1cc to Mr.P.V.Jayakumari, Advocate, S.R.No.9335

+2ccs to M/s.Sudha Ramalingam, Advocate, S.R.No.9837

C.M.A.No.67 of 2018

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