

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 13.04.2018

CORUM

THE HON'BLE MR.JUSTICE R.SUBBIAH
and
THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

C.M.A.No.965 of 2014
and
M.P.No.1 of 2014

Tmt.N.Premalath ... Appellant

Vs.

P.Rajkumar ... Respondent

Civil Miscellaneous Appeal has been filed under Section 19 of the Family Courts Act, 1984 against the fair and final order dated 10.01.2014 in I.A.No.2016 of 2012 in H.M.O.P.No.217 of 2010 on the file of the Family Court Judge, Coimbatore.

For Appellant : Mr.A.E.Ravichandran
for M/s.N.AnandVenkatesh

For Respondent : Ms.R.Sumithra Chakkaravarthi

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JUDGMENT

(Judgment of the Court was delivered by R.SUBBIAH, J.,)

The appellant herein is the wife and the respondent herein is the husband. This appeal has been filed by the appellant/wife against the order dated 10.01.2014 in I.A.No.2016 of 2012 in H.M.O.P.No.217 of 2010 passed by the Family Court Judge at Coimbatore, dismissing the petition filed by the appellant/wife under Order 6 Rule 17 and Section 151 of CPC, for amendment of the Original Petition filed by her under Section 10 of the Hindu Marriage Act for judicial separation.

2.It is stated that the marriage between the appellant and the respondent took place on 26.10.2001 at Coimbatore, as per the Hindu rites and customs. Out of the wedlock, the appellant has given birth to a male child on 11.09.2002. Subsequently,

due to the matrimonial disputes, the appellant has filed a petition H.M.O.P.No.217 of 2010 under Section 10 of the Hindu marriage Act before the Family Court at Coimbatore seeking judicial separation. The said OP was opposed by the respondent by filing a counter. In the said OP, the appellant has also taken out an application in I.A.No.1626 of 2010 for interim custody of her son. It is stated by the appellant/wife that in the main Original Petition she failed to seek the permanent custody of her son and also failed to pray for permanent alimony from her husband. Hence, the appellant had filed I.A.No.2016 of 2016 praying to amend the petition by adding additional prayers. The said amendment application was opposed by the respondent by filing a detailed counter. After hearing both sides, the Court below has dismissed the amendment application vide order dated 10.01.2014, which is impugned in the present appeal.

3.Today, when the matter is taken up for consideration, the learned counsel appearing for the appellant submitted that the Court below has dismissed the amendment application without assigning any valid reason and that the amendment could be sought for at any stage of the trial. In this regard, the learned counsel for the appellant has also relied upon Section 25 of the Hindu Marriage Act and made a detailed submission.

4.However, the learned counsel appearing for the respondent submitted that the trial in the main OP was completed and after completion of the trial, the appellant has filed the amendment application only to prolong the case; therefore, the Court has correctly dismissed the amendment application. Thus, the learned counsel for the respondent sought for dismissal of the appeal.

5.Be as it may, We are of the opinion that now, almost four years have lapsed from the date of filing the appeal and in the main OP, the trial has also reached the completion stage. At this stage, if this appeal is allowed, it would result in dragging of the proceedings further. Hence, We are not inclined to entertain this appeal. Hence, this appeal is dismissed. However, with regard to the custody of the child and permanent alimony, the appellant is at liberty to work out her remedy by initiating separate legal proceedings before the trial Court. Further, the Court below is also directed to dispose of the main OP in accordance with law as early as possible, preferably on or before 30.06.2018.

Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

To,

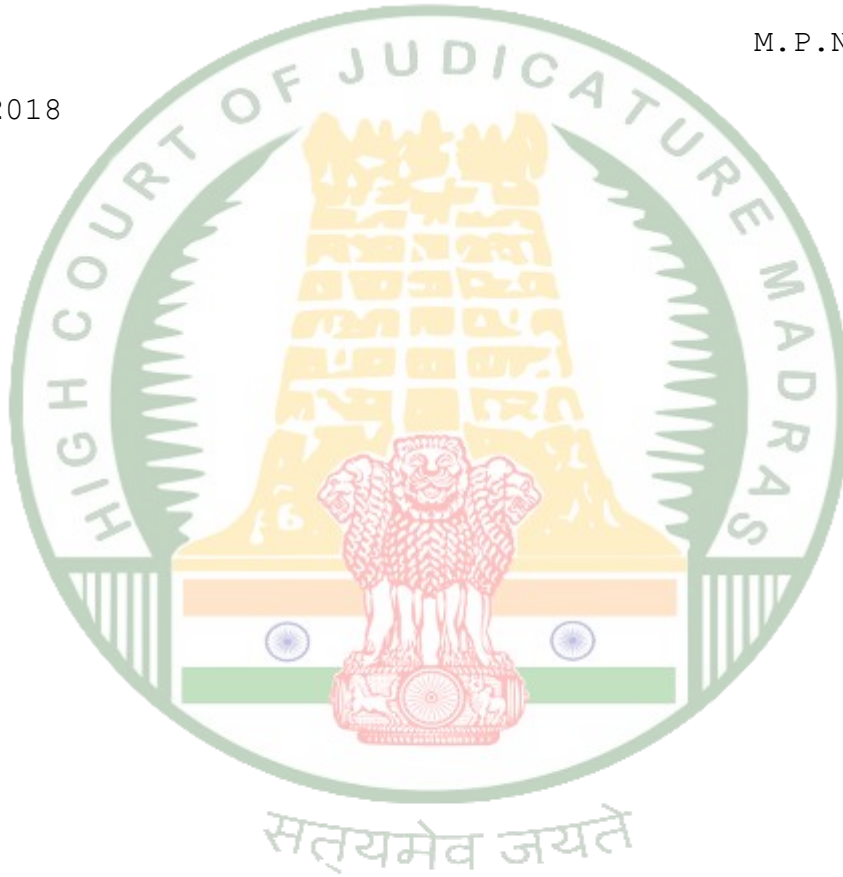
The Family Court Judge,
Coimbatore.

+ 1 cc to M/s.N.AnandVenkatesh Advocate, SR.27460

+ 1 cc to M/s.S.Chakkaravarthi Advocate, SR.27797

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