

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.02.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P. (PD) No.388 of 2018

S.Vinod

Petitioner

Versus

1. B.Karthiga
2. G. Akash

Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to issue suitable directions to the Trial Court, namely, The Family Court at Salem so as to number the petition in F.C.O.P. Sr. No.1997 of 2017 and dispose the F.C.O.P. Petition.

For Petitioner

:

Mr.N.Manoharan for Ms.Harinyi

ORDER

The petitioner has filed a petition under Section 7 (i) (a) and Explanation (a) of the Family Courts Act 1984 and Section 13 (1) (i) and 13 (a) (i-a) of the Hindu Marriage Act, 1955 for dissolution of the marriage before the Family Court, Salem against the 1st respondent herein. The said original petition was presented on 12.12.2017 before the Family Court and the same was returned on 14.12.2017, by pointing out the following defects :-

1. For the prayer (c) to (e) separate Petitions to be filed;
2. Cause of action Para to be given clearly. Hence, Petition Returned. Time One Month.

2. Again it was represented on 09.01.2018 with detailed explanations for the defects pointed out by the Court below. Once again, it was returned on 17.01.2018 with the following defects :-

"The permanent injunction and Declaration prayer cannot be sought in the Original Petition. They should be filed by way of interim application separately. Hence Returned"

3. Challenging the above, the petitioner has filed this Civil Revision Petition before this Court.

4. Learned counsel for the petitioner has relied upon Section 7 of the Family Court, Act 1984.

7. Jurisdiction (a) Subject to the other provisions of this Act, a Family Court shall

(a) have and exercise all the jurisdiction exercisable by any district Court or any subordinate civil Court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district Court or, as the case may be, such subordinate civil Court for the area to which the jurisdiction of the Family Court extends

Explanation : - The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely :-

9a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person';

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

5. As per the aforesaid provisions of the Act, it is the petitioner, who is entitled for a declaration and consequential permanent injunction.

6. Further the learned counsel for the petitioner has relied upon the judgment reported in **2009 (5) CTC 550 in R. Manickam & Another Vs. The Sengunthar Charitable Trust & 14 Others**, wherein this Court has considered the scope of the powers of the Civil Court to entertain a plaint.

7. He has also relied upon the judgment reported in **2016 2 L.W. 340 in Muthuganesh Vs.Thillaimani & Others** wherein, this Court has considered any delay in entertaining the plaint will cause prejudice to the litigants.

8. Therefore, in the light of the above facts and circumstances and also based on the decision cited supra, the Family Court /Court below is directed to consider the O.P. based on the judgments and to number the petition, if it is otherwise in order. With regard to maintainability is concerned, the same shall be decided at a later stage.

9. In view of the above, the petitioner is directed to represent the papers within a period of two weeks from the date of receipt of a copy of this order.

10. The Registry is also directed to return the original petition after obtaining the copy of the said petition to the learned counsel for the petitioner.

11. With these directions, the Civil Revision Petition is disposed of. No

costs.

07.02.2018

Index : Yes/No
Internet : Yes / No
Speaking/Non Speaking
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Issue order copy on 21.02.2018

To
The Family Court at Salem



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D.KRISHNAKUMAR, J.



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