

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP(PD)No. 3240 of 2016

against

H.M.O.P.No.57 of 2016

and

C.M.P.No.16433 of 2016

Vivek

.. Petitioner

Vs

Vanitha

.. Respondent

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, seeking to strike off the petition in H.M.O.P.No.57 of 2016 pending on the file of the Sub Ordinate Judge, Sankari by allowing the Civil Revision Petition.

For Petitioner : Mr. L.C.Chandrakumar

For Respondent : Mr.T.Murugamanickam
(Standing Counsel)

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ORDER

The respondent has filed the H.M.O.P.No.57 of 2016 under Section 9 of Hindu Marriage Act before the Sub Ordinate Judge, Sankari for restitution of conjugal rights.

2. According to the petitioner, the respondent has stated that there was a love affair between the petitioner and the respondent. The respondent's family has consented for the marriage and on the other hand, the parents of the petitioner herein are against the marriage. Therefore, the petitioner and respondent were waiting for the consent of their parents and were living as husband and wife. Further, the respondent has alleged that the petitioner has joined in Indian Navy at Vishakapattinam and prolonged the time of marriage. She further contended that at the request of the petitioner, marriage was organised at Coimbatore by inviting few close friends on 02.04.2015.

3. According to the learned counsel for the respondent, the marriage was solemnized between the petitioner and the respondent on 02.04.2015. After the marriage, the petitioner left to join duty. The respondent alleged that the petitioner often used to say that his parents are not willing to accept the respondent as his wife and that his parents were making arrangements to marry some other woman within their community. At this stage, the respondent filed the H.M.O.P.No.57 of 2016 seeking for restitution of conjugal rights against the petitioner herein.

4. According to the learned counsel for the petitioner herein, filing of H.M.O.P.No.57 of 2016 is abuse of process of Court. According to the learned counsel for the petitioner, there is no marriage solemnised between the petitioner and the respondent. Hence, he has filed the present civil revision petition to strike off the petition in H.M.O.P.No.57 of 2016 pending on the file of the Sub Ordinate Judge, Sankari.

5. The learned counsel for the respondent would submit that the aforesaid facts are disputed. The grounds raised in the Civil Revision Petition, cannot be decided under Article 227 of the Constitution of India and therefore, the Civil Revision Petition is liable to be dismissed as not maintainable.

6. By considering the above facts and submissions made by the parties, the grounds raised by the petitioner before this Court that the filing of H.M.O.P.No.57 of 2016 is abuse of process of Court, as the same was filed by fabricating the documents. There is no marriage solemnised between the petitioner and the respondent. Therefore, the said allegations of the petitioner cannot be decided in the present Civil

Revision Petition and the same shall be adjudicated only by adducing oral and documentary evidence during the trial, since the grounds raised by the petitioner are disputed facts and this Court cannot go into disputed fact in the present Civil Revision Petition. Hence, this Court is not inclined to entertain the Civil Revision Petition and the same is liable to be dismissed.

7. At this stage, the learned counsel for the petitioner seeks this Court, to direct the Court below to dispose of the H.M.O.P.No.57 of 2016 within the time frame as may be fixed by this Court.

8. In view of the facts and circumstances of this case, the **Civil Revision Petition is dismissed** with a direction to the Sub Ordinate Court, Sankari to dispose of the H.M.O.P.No.57 of 2016 on merit and in accordance with law within a period of three months from the date of receipt of a copy of this order. No cost. Consequently, connected civil miscellaneous petition is closed.

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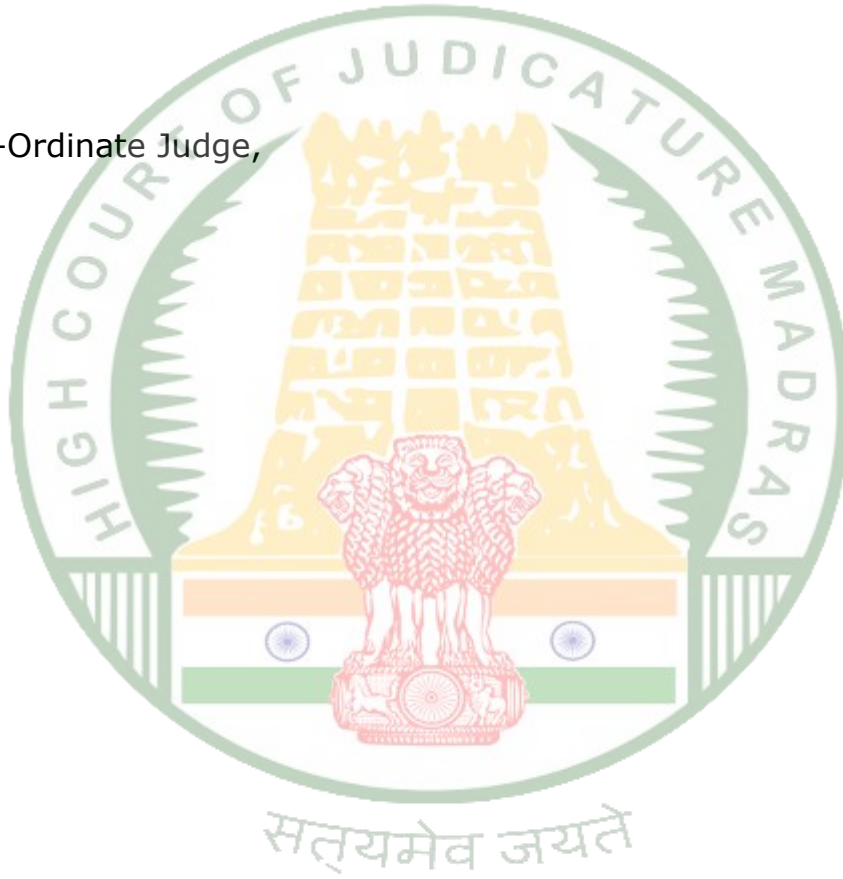
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Speaking Order / Non-Speaking Order

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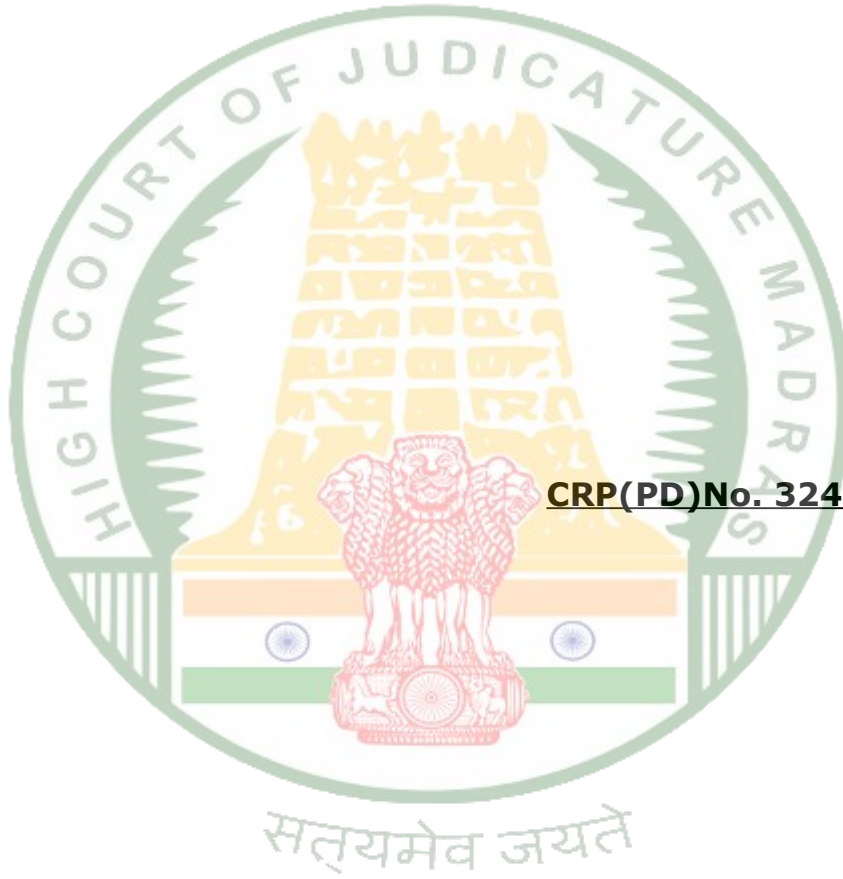
The Sub-Ordinate Judge,
Sankari.



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D. KRISHNAKUMAR J.,

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Order in
CRP(PD)No. 3240 of 2016

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