

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.2617 of 2013
and M.P.No.1 of 2013

T.Ramesh

.. Petitioner

Vs.

G.Prema

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 29.11.2012 made in I.A.No.243 of 2011 in F.C.O.P.No.26 of 2009 on the file of the Family Court, Salem.

For Petitioner : Mr.S.Prabhu

For Respondent : No appearance

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 29.11.2012 made in I.A.No.243 of 2011 in F.C.O.P.No.26 of 2009 on the file of the Family Court, Salem.

2.The petitioner filed F.C.O.P.No.26 of 2009 against the respondent for divorce. The respondent filed counter statement and

is contesting the O.P. The petitioner filed I.A.No.243 of 2011 under Order XXIII Rule 1(3) read with Section 151 of C.P.C for permission to withdraw the O.P and file a fresh O.P on the same cause of action. The petitioner sought for said relief on the ground that earlier he was married to one Uma Maheswari on 08.06.2000, which was an arranged marriage and there was no divorce between the petitioner and said Uma Maheswari, dissolving the said marriage and earlier marriage is still subsisting. In view of subsisting first marriage with Uma Maheswari, the marriage between the petitioner and respondent is a void one. The petitioner was not properly advised at the time of filing O.P with regard to the relief to be sought for by him. Instead of seeking relief of declaration that marriage between the petitioner and respondent is void, the petitioner sought for decree of divorce.

3.The respondent filed counter affidavit and denied all the averments made in the affidavit filed by the petitioner. According to the respondent, the marriage between the petitioner and respondent is an arranged marriage and two children were born in the wedlock. The said Uma Maheswari is living at 2nd cross, Manickavasagar street, Ammapetai, Salem-3 along with her husband and four children.

4.The learned Judge considering the averments made in the affidavit and counter affidavit, dismissed the application on the ground that the said Uma Maheswari is living with her husband and four children.

5.Against the said order of dismissal dated 29.11.2012 made in I.A.No.243 of 2011 in F.C.O.P.No.26 of 2009, the present Civil Revision Petition is filed by the petitioner.

6.Heard the learned counsel for the petitioner and perused the materials available on record. Though the respondent filed caveat through one Mr.G.Jayaseelan and notice was served on her and her name is printed in the cause list, there is no representation either in person or through counsel.

7.The reasoning given by the learned Judge for dismissal of the application is not a valid reason. In the application for withdrawal of proceedings with liberty to file fresh petition on the same cause of action, the consideration is whether there is any formal defect in the petition or there are sufficient grounds for party to institute a fresh suit on the same cause of action. The Order

XXIII Rule 3 of C.P.C reads as follows:

**ORDER XXIII- WITHDRAWAL AND ADJUSTMENT
OF SUITS
(3) Where the Court is satisfied,—**

"(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject- matter of such suit or such part of the claim."

8.In the present case, the learned Judge has not considered the scope of Order XXIII Rule 3 of C.P.C in proper perspective. The fact that Uma Maheswari is living with her husband and four children cannot be presumed that marriage between the petitioner and said Uma Maheswari was dissolved. For the above reason, the impugned order of the learned Judge dated 29.11.2012 made in I.A.No.243 of 2011 in F.C.O.P.No.26 of 2009 is liable to be set aside and is hereby set aside.

9.In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

13.02.2018

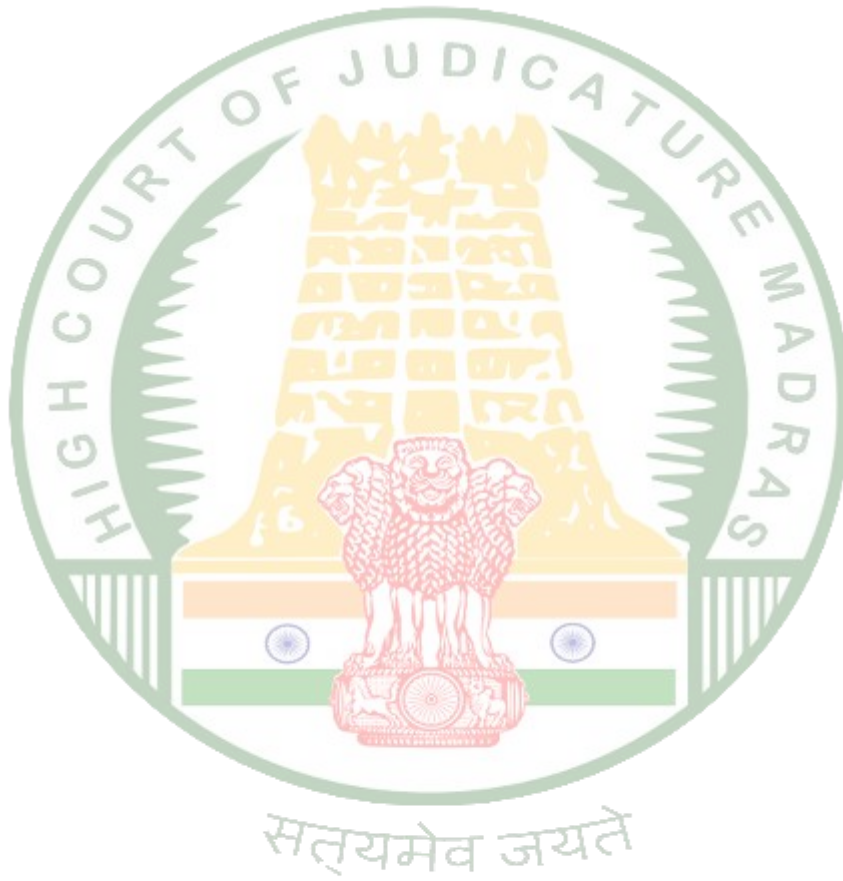
Index :: Yes/No

gsa

To

The Judge,

Family Court, Salem.



WEB COPY

V.M.VELUMANI, J.

gsa



C.R.P.(PD)No.2617 of 2013
and M.P.No.1 of 2013

WEB COPY

13.02.2018