



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 06.08.2018
CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

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CRP (MD)No.2439 of 2017 (PD)
and
CMP(MD)No.11568 of 2017

Sinduja

... Petitioner/Respondent/
Respondent

Vs.

Samuvel

... Respondent/Petitioner/
Petitioner

Prayer : This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.21 of 2017 in I.D.O.P.No.119 of 2016, dated 09.08.2017, on the file of the Additional District Court (Fast Track Court), Tenkasi.

For Petitioner : Mr.F.X.Eugene
For Respondent : Mr.V.Meenakshi Sundaram
for Mr.D.Nallathambi

ORDER

The revision petitioner is the wife. The petitioner and the respondent got married to each other on 03.06.2016 at Sengottai, Tirunelveli District as per Christian rites and customs. No children have been born of the wedlock. The respondent filed IDOP.No.119 of 2016 before the Additional District Judge (FTC) Tirunelveli @ Tenkasi seeking dissolution of the marriage. The petitioner herein filed IDOP.No.56 of 2017 seeking restitution of conjugal rights. Both these petitions were tried simultaneously. The respondent herein was in the witness box. At that stage, the respondent filed I.A No.21 of 2017 under 23 Rule 3 of CPC for withdrawing the IDOP with liberty to file a fresh O.P on the same as well as the subsequent cause of action. The said I.A.No.21 of 2017 filed by the respondent was allowed by the learned Trial Judge by order dated 09.08.2017 and leave was granted for instituting a fresh I.D.O.P on the same as well as the subsequent cause of action. Availing the said liberty, the respondent instituted IDOP.No.176 of 2017 in the same court. The order dated 09.08.2017 allowing IA.No.21 of 2017 and granting leave to the respondent for withdrawing IDOP.No.119 of 2016 and instituting a fresh I.D.O.P is assailed in this Civil Revision Petition.



2. Heard the learned counsel on either side.

3. This Court is of the view that the learned Trial Judge was not justified in permitting the respondent to withdraw IDOP.No.119 of 2016 and permitting the respondent to institute a fresh petition. The learned counsel for the respondent submitted that IDOP.No.119 of 2016 was filed principally on the ground of non-consummation of marriage. But then, during the pendency of the said proceedings, the petitioner herein has sent complaints against the respondent to various authorities and thereby caused cruelty within the meaning of law. He therefore submitted that a fresh cause of action has arisen in his favour which would entitle him to seek for divorce.

4. This Court is of the view that instead of permitting him to withdraw the earlier IDOP and filing a fresh petition for divorce, the respondent can be permitted to incorporate additional pleadings in IDOP.No.119 of 2016. The respondent herein is given two weeks time for filing such additional pleadings in IDOP.No.119 of 2016 on the file of the Additional District Judge (FTC) Tirunelveli @ Tenkasi from the date of receipt of a copy of this order. The petitioner is given one week time thereafter to file her written response to the said additional pleadings. It is needless to mention that both the parties are at liberty to adduce evidence in support of and contesting the same. However, the entire trial shall be concluded in IDOP.No.119 of 2016 as well as IDOP.No.56 of 2017 within a period of three months from the date of receipt of a copy of this order.

5. The learned counsel on either side submitted that availing the liberty given in the impugned order, the respondent had filed IDOP.No.176 of 2017 before the Additional District Judge (FTC) Tirunelveli @ Tenkasi. Since the order impugned in this Civil Revision Petition has itself been set aside, the said IDOP.No.176 of 2017 on the file of the III Additional District Judge, Tirunelveli @ Tenkasi stands struck off the file.

6. With this direction, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar (CS-III)

To

<https://hcservices.ecourts.gov.in/hcservices/>

The Additional District Judge, (FTC)
Tirunelveli @ Tenkasi



+1cc to Mr.D.Nallathambi, Advocate SR.No.77527

+1cc to Mr.F.X.Eugene, Advocate SR.No.77366

Skm

MK/RSK/SAR 3/29.08.2018/3P/4C

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