



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(PD) (MD) .No.1836 of 2016

and

C.M.P.(MD) No.8838 of 2016

M.Deivam

... Petitioner

Vs

S.Buvaneswari

... Respondent

PRAYER : Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 13.04.2016 in I.A.No.15 of 2015 in H.M.O.P.No.49 of 2011 on the file of the Subordinate Court, Theni.

For petitioners: Mr.G.Prabhu Rajadurai

For respondents: Mr.P.Arun Jayatram

ORDER

The petitioner herein filed H.M.O.P.No.49 of 2011 on the file of the learned Sub Judge, Theni, for getting an declaration that the marriage that took place between the petitioner and the respondent on 22.08.2010 should be annulled. In the said H.M.O.P., the petitioner filed I.A.No.15 of 2015 for amending the petition to pray for the relief of divorce in the alternative. He also wanted to add Paragraph-15 (a) in the petition. The said I.A., was dismissed by order dated 13.04.2016. Questioning the same, this Civil Revision Petition has been filed.

2.The learned counsel for the respondent wanted this Court to sustain the order passed by the Court below. He placed reliance on the decisions reported in **2009 (10) SCC 64 in the case of J.Lakshmi Priya vs Krishnakumar, 2012 (2) SCC 300** in the case of **J.Samuel and others Vs. Gattu Mahesh and others** and **AIR 2012 RAJASTHAN 8** in the case of **Reema Bajaj v. Sachin Bajaj**.

3.He also contended that the application was taken out after the petitioner's side evidence was closed and the respondents side evidence also substantially over. In fact, two witnesses on the side of respondent have also been examined and



the third witness was to face cross examination. Therefore, the test of due diligence is not at all satisfied in this case.

4. Though, the contentions raised by the learned counsel for the respondent carry considerable force and weight, I am of the view that a practical approach will have to be taken, since, it is a matrimonial proceeding. In the Rajasthan case relied upon by the learned counsel for the respondent, the petitioner sought restitution of conjugal rights and also divorce in the same breathe. The High Court of Rajasthan held that these are diametrically opposite prayers and therefore, the amendment cannot be permitted.

5. But here, the learned counsel for the revision petitioner seeks annulment of the marriage with the respondent. And the alternative relief sought for is only divorce.

6. I am of the view that they cannot be said to be opposite prayers. Order 7 Rule 7 states that *"Every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative."* Therefore, asking for an alternative prayer of divorce when the original prayer is for annulment cannot be said to be illegal.

7. It is true that the trial had substantially progressed in this case. The test of due diligence on the face of it, is not made out. But then, this Court cannot lose its sight on the fact even if the present H.M.O.P., is dismissed, it will be open to the petitioner to file a fresh one, seeking divorce on the same cause of action, now projected. That would only result in harassment of the respondent. In order to avoid multiplicity of proceedings, the amendment sought for can be allowed.

8. The counsel for the revision petitioner submits that he would not seek to recall himself to adduce further evidence. He will be satisfied, if the respondent is recalled and certain questions are allowed to be put and certain documents are marked through her.

9. This undertaking given by the learned counsel for the revision petitioner is recorded. The order impugned in this Civil Revision Petition is set aside and Civil Revision Petition is allowed.

10. The petitioner shall carry out the consequential amendment within a period of two weeks from the date of receipt of a copy of this order. He shall also take out an application for recall of the respondent, for the purpose of cross examination. The Court below shall allow the same. The entire proceedings shall be concluded within a period of three months from the date



of receipt of a copy of this order.

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

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Sd/-

Assistant Registrar (Records)

// True Copy //

Sub Assistant Registrar (CS-III)

To

1. The Subordinate Judge,
Theni.

2. The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO MR.P.ARUN JAYATRAM , ADVOCATE IN SR NO.82981
+ 1 CC TO MR.G.PRABHU RAJADURAI, ADVOCATE IN SR NO.83169

PNN

BU/SKN/SAR-III : 09.11.2018 : 3P/6C

ORDER MADE IN
C.R.P. (PD) (MD) .No.1836 of 2016
and
C.M.P. (MD) No.8838 of 2016
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