



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.11.2018

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (MD) .No.2474 of 2018 (PD)

WEB COPY

G.Sekar

... Petitioner /Petitioner/ Petitioner

Vs.

S.Uma

... Respondent / Respondent/Respondent

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, praying to direct the learned Judge, Family Court, Madurai to number the unnumbered I.A.No. Nil of 2018 in H.M.O.P.No.345 of 2018 pending before the Family Court, Madurai.

For petitioner

:Ms.M.D.Devi Saravana Priya

ORDER

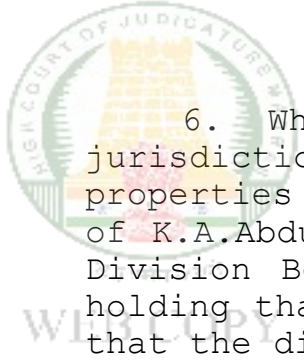
This civil revision petition has been filed by the petitioner seeking a direction to the learned Judge, Family Court, Madurai to number the unnumbered I.A.No.Nil of 2018 in H.M.O.P.No.345 of 2018 pending before the Family Court, Madurai.

2. The petitioner herein has filed H.M.O.P.No.345 of 2018 for divorce. During the pendency of the said petition, he has presented a petition before the Family Court, Madurai, seeking the relief of permanent injunction not to alienate or encumber over the petition mentioned property. The Court below has returned the said petition on the ground of maintainability. Hence, the petitioner is before this Court seeking the above said relief.

3. Heard the learned counsel for the petitioner. Considering the limited scope of this petition, this Court is of the view that notice need not be sent to the respondent.

4. Admittedly, the petitioner has filed a petition for divorce in H.M.O.P.No.345 of 2018 and the same is still pending. During the pendency of the same, he has filed an application seeking the relief of permanent injunction in respect of the petition mentioned property stating that it has been purchased in the name of the petitioner as well as the respondent and that the respondent is attempting to create encumber over the said property.

5. Section 7 of the Family Courts Act describes about the types of proceedings over which the Family Court has jurisdiction to try. One such proceeding mentioned in Section 7(1)(c) reads that "a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them." Hence, the dispute, regarding the properties between the parties which belonged to either spouse, can be decided by the Family Court.



6. When the issue as to whether the Family Court has jurisdiction to adjudicate upon any question relating to the properties of divorced parties? arises for consideration in the case of K.A.Abdul Jaleel vs. T.A.Sahida reported in AIR 1997 Ker 269, a Division Bench of the Kerala High Court has dismissed the appeal holding that "the Family Court Judge was perfectly right in holding that the disputes between the appellant and the respondent are to be decided by the Family Court and it has got jurisdiction under Section 7(1)(c) of the Family Courts Act, even though the appellant and the respondent are no longer parties to subsisting marriage". The said decision was subsequently affirmed by a Full Bench of the Hon'ble Supreme Court of India in Appeal (Civil) No.3322 of 2003 (SLP (Civil) No.8996 of 2001), dated 10.04.2003.

7. From the above decisions, it is clear that even the properties with regard to the divorced parties can be decided by the family Court. In this case, when the issue with regard to divorce subsisting, the petitioner has filed the interlocutory application seeking the relief of permanent injunction, in order to avoid multiplicity of proceeding. The said petition is very well maintainable before the Family Court. The Court below has erroneously returned the said application.

8. In view of the above, this Court directs the petitioner to represent the interlocutory application, dated 14.09.2018, to the Family Court, Madurai and the Family Court Judge, Madurai is directed to accept the said interlocutory application and number the same if it is otherwise in order.

9. This Civil Revision Petition is disposed of accordingly. No costs.

Sd/-

Assistant Registrar(Cr1.side)

/True Copy/

Sub Assistant Registrar(CS-I)

To

The Judge, Family Court, Madurai.

Copy To:

The Record Keeper, V.R. Section,

Madurai Bench of Madras High Court, Madurai. **(2 Copies)**

(Note : The Registry is directed to return the original application after getting photostat copy of the same).

+1CC to Mr.PT.S.NARENDRAVASAN, Advocate, SR.No.94707

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GCG

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

ES/SKN/RSK/SAR 1/05.12.2018/2P/5C