



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.10.2018

CORAM

THE HONOURABLE MR. JUSTICE **G.R. SWAMINATHAN**

C.R.P(MD) (PD) .No.2158 of 2018

and

C.M.P(MD) .No.9567 of 2018

R.Jai Ganesh

... Petitioner

vs.

C.Sathiya Bama

...Respondent

PRAYER: Petition filed under Article 227 of the Constitution of India, to call for the records in I.A.No.377 of 2015 in H.M.O.P.No.72 of 2013 on the file of the Subordinate Court, Tuticorin dated 26.07.2018 and set aside the same.

For Petitioner : Mr.K.P.S.Palanivel Rajan

O R D E R

The petitioner in H.M.O.P.No.72 of 2013 on the file of the Subordinate Court, Thoothukudi is the revision petitioner herein. The revision petitioner filed I.A.No.377 of 2015 for referring the respondent herein for psychiatrist examination and for submission of report. The Court below by an order dated 26.07.2018 dismissed the said interlocutory application. Questioning the same, this civil revision petition has been filed.

2.Heard the learned counsel appearing for the revision petitioner.

3.It is seen that the revision petitioner had earlier filed I.A.No.131 of 2011 for appointing a guardian for the respondent on the ground of her alleged mental unsoundness. The said interlocutory application was dismissed. The revision petitioner herein filed CRP(PD).No.4663 of 2012 before the Principal Seat of this Court. This Court by an order dated 30.01.2013 dismissed the said Civil Revision Petition by observing as follows:-

"5.According to me, it is not necessary that in all cases, before adjudging a person as unsound mind or sound mind, the person must be examined by an expert. Only when the Court is not able to arrive at a conclusion on the basis of the enquiry conducted by it, the Court can refer the party for examination by a medical expert and when the Court is capable of coming to any conclusion on



the basis of enquiry conducted by it about the mental capacity of the person, there is no need to refer the party to a medical expert for opinion. In this case, the Court was satisfied about the mental capacity of the respondent and therefore, there is no need for the Court to refer the respondent to medical expert. "

4. In fact the learned trial Judge dismissed I.A.No.377 of 2015 only in view of the earlier order in CRP(PD).No.4663 of 2012. The approach adopted by the Court below cannot be faulted.

5. It is seen that the revision petitioner filed HMOP under Section 12 of the Hindu Marriage Act as early as in the year 2011. The HMOP was numbered only in the year 2012. It is open to the revision petitioner to cross examine the respondent at length on this aspect of the matter. The Court below shall decide this issue uninfluenced by the outcome of this civil revision petition. Since the HMOP was filed almost seven years ago, the Court below shall dispose of the HMOP, within a period of four months from the date of receipt of a copy of this order.

6. With this direction and observation, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS-III)

To

1. The Subordinate Judge, Tuticorin.

+1 CC To MR.K.P.S.PALANIVELRAJAN, Advocate SR. NO. 89202

C.R.P (MD) (PD).No.2158 of 2018
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RMK

TR/SKN/SAR-III (12.11.2018) 2P 3C