

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P(PD).No.1144 of 2018

&

C.M.P.No.5939 of 2018

T.R.S.Pathy Senthil

...Petitioner

Vs

Aishwarya Pathy

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of Constitution of India against the order dated 07.03.2018 passed in I.A.No.18 of 2018 in H.M.O.P.No.100 of 2012 on the file of the Subordinate Court Mettupalayam.

For Petitioner : Mr.M.Mohamed Riyaz

For Respondent : Mr.R.Bharathkumar

ORDER

The above application is filed by the husband challenging the order passed by the Subordinate Judge, Mettupalayam in I.A.No.18 of 2018 in H.M.O.P.No.100 of 2017, whereby, the learned Judge has allowed the application filed by the wife to summon one Vivitha as witness on her side in the divorce proceedings initiated by the husband.

The facts in brief necessary for disposing of the Civil Revision Petition are as follows:

2.The husband had filed the application seeking for divorce on the grounds of cruelty and desertion in H.M.O.P.No.100 of 2017 and the wife in turn had filed H.M.O.P.No.7 of 2017 for restitution of Conjugal Rights on the file of the Subordinate Court, Mettupalayam.

3.When the matter was posted for arguments this petition was moved by the wife to examine the said Vivitha. The reason

for examining the said lady is on the ground that the revision petitioner had married her during subsistence of the 1st marriage and had a child through the said Vivitha and therefore the said Vivitha had to be examined in order for the wife to substantiate her case.

4.The respondent had filed a counter denying the allegations but however in Paragraph No.5 of the counter statement the respondent had stated as follows:

"But the respondent herein had pleaded that the said Vivitha was working as a Personal Assistant cum Medical Caretaker of the respondent's father"

5.Then in Paragraph No.7 he has further stated as follows:

"It is admitted fact by the petitioner that Vivitha was nursing his father and is a staff and she is staying in the house of the respondent. It is also admitted that the said Vivitha gave birth to a child and the said child is also staying with her."

6. Therefore there is enough material to substantiate the case of the wife that the said Vivitha was living in the house of the respondent. The learned Subordinate Judge has rightly allowed the application, since, if the said Vivitha was not the wife of the revision petitioner as alleged, she has nothing to fear in giving evidence and the revision petitioner will not to be prejudiced in any fashion.

7. I find no infirmity in the order passed in I.A.No.18 of 2018 in H.M.O.P.No.100 of 2017, therefore the above Civil Revision Petition stand disposed off. However considering the fact that the delicate questions would posed to the witness the examination of the said Vivitha shall be held in camera and only respective counsels and the petitioner shall be present no other person including the respondent nor family his members will be present during the examination.

8.The cross examination of the witness will be completed on the very same day that she appears. No adjournments will be granted for cross examination of the witness. In case adjournment is taken, the evidence till then taken will stand eschewed.

The Court shall endeavor to dispose of the H.M.O.P within one month from the date of cross examination of the said Vivitha. The Civil Revision Petition is disposed on the above lines. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is also closed.

सत्यमेव जयते

11.02.2019

kan

Index : Yes/No

Speaking order/non-speaking order

Note: Issue Order copy today i.e.12.02.2019.

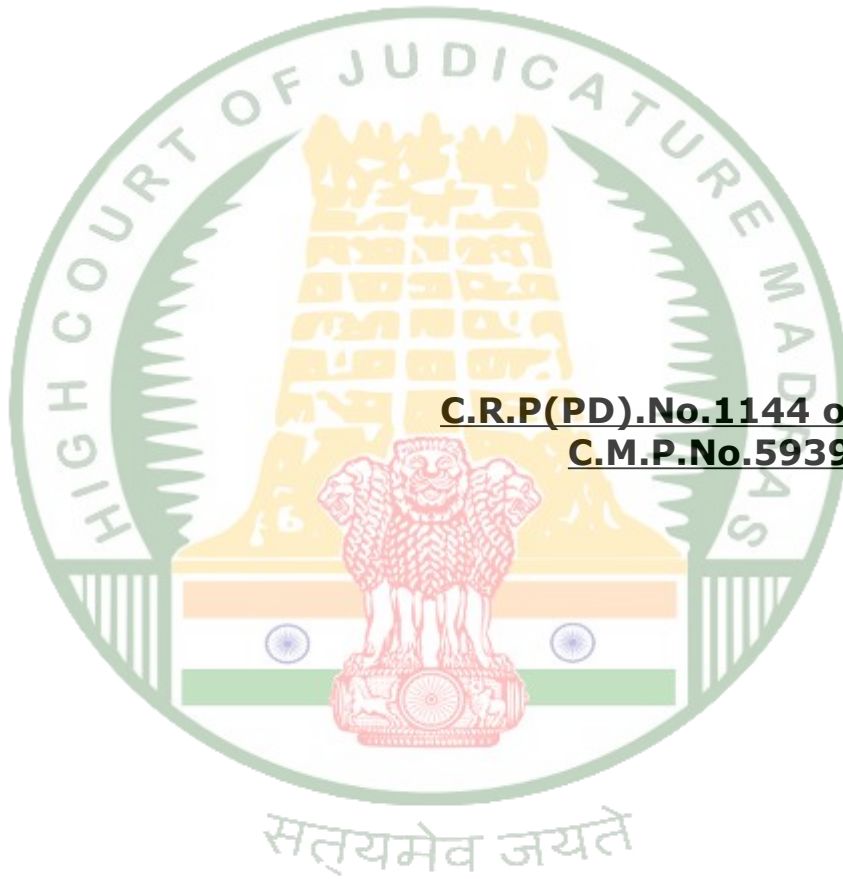
To

1.The Subordinate Judge,

Mettupalayam.

P.T.ASHA, J.,

kan



**C.R.P(PD).No.1144 of 2018 &
C.M.P.No.5939 of 2018**

WEB COPY

11.02.2019