

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

C.R.P. (PD) No. 1418 of 2019

and

C.M.P. No. 9319 of 2019

M. Vijaykeerti ... Petitioner

-Vs-

R. Sanjana ... Respondent

**Prayer :** Petition filed under Article 227 of the Constitution of India against the order dated 30.01.2019, partly allowing the I.A. No. 5995 of 2018 in H.M.O.P. No. 2986 of 2017, on the file of the IV Additional Family Court at Chennai.

For Petitioner : Mr. P. Raja

For Respondent : Mr. A. Kumaraguru

**ORDER**

This Civil Revision Petition has been filed against the fair and decretal order passed in I.A. No. 5995 of 2018 in H.M.O.P. No. 2986 of 2017, on the file of the IV Additional Family Court at Chennai, by order dated 30.01.2019.

2. Before the Lower Court, which is IV Additional Principal Judge i.e., IV Additional Family Court at Chennai, the revision petitioner had filed the main OP i.e., H.M.O.P. No. 2986 of 2017 seeking for divorce against the respondent / wife.

3. In the said OP, it seems that, when the matter was heard at the trial stage it was noticed that the prayer in the OP is for the dissolution of the marriage which was taken place and solemnized on 23.12.2015, including the registration which also taken place on the same day.

4. However the fact remains that, the marriage was taken place and solemnized on 09.09.2015, however it was registered in the concerned Sub Registrar Office only on 23.12.2015.

5. When that being the position, if the prayer originally couched in the OP filed by the revision petitioner is allowed to be sustained, then it will be wrong one as the marriage was not solemnized on 23.12.2015 and it had already been solemnized on

09.09.2015 and only on 23.12.2015, it was registered at the concerned Sub Registrar Office. Therefore, in order to rectify the mistake, the revision petitioner wanted to file an amendment petition, accordingly he filed an amendment petition in I.A. No. 5995 of 2018 and in the said IA seeking for amendment, the revision petitioner instead of requesting the aforesaid amendment in the prayer to declare the marriage solemnized on 09.09.2015 and registered on 23.12.2015 as null and void, the revision petitioner has also sought for further amendment to add the ground of cruelty for the purpose of the decision of the said OP, that too based on the subsequent developments.

6. Only in that circumstances, after having heard the said IA, the learned Judge, through the impugned order having allowed the amendment sought for in respect of the main portion of the prayer, as has been discussed above, was pleased to reject the remaining prayer to add the ground of cruelty in the main OP. As against the disallowed portion in the said IA, the revision petitioner has preferred the present revision petition.

7. Heard Mr. P. Raja, learned counsel appearing for the revision petitioner as well as Mr. A. Kumaraguru, learned counsel appearing for the respondent.

8. The material placed before this Court including the impugned order have been perused by this Court.

9. The fact remains that, the OP was filed by the revision petitioner in the year 2017, where a counter has already been filed by the respondent as early as in November 2017 and thereafter, during the trial only, it was noticed, mistakenly in the prayer, though there had been two dates to denote the solemnization of the marriage as well as the registration of the marriage, the petitioner had chosen to give only one date, i.e., 23.12.2015, as if that, on the said date, both marriage was solemnized and registered duly in the Sub Registrar Office concerned.

10. The said mistake may be a fatal to the OP and realized the same, that was also not resisted by the respondent / wife, in so far as the said amendment sought for is concerned.

11. However the further amendment as sought for by the revision petitioner, to add a ground of cruelty was stoutly opposed by the respondent / wife, therefore taking into account, the learned Judge while allowing the first amendment, rejected the second plea.

12. I have gone through the said order and the reasons stated therein, in the considered opinion of this Court, it does not require any interference from this Court in view of the fact that, the said amendment adding a ground of cruelty after filing OP was made, that too at the time of trial in the amendment petition filed only to rectify the mistake apparently occurred in respect of date of marriage. Therefore the petitioner cannot seek indulgence of this Court to introduce a new ground called 'cruelty' which was originally not pleaded in the OP. However the Court below, while chosen to allow the first part of the prayer in the OP, rejected the second part of the prayer. Accordingly there is no infirmity or perversity in the said order which is impugned herein.

**R. SURESH KUMAR, J.**

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13. Resultantly, the Civil Revision Petition fails and hence it is dismissed. It is made clear that, the dismissal of this Civil Revision Petition will not preclude the revision petitioner to agitate any of his right accrued on him in the manner known to law. Consequently, connected Miscellaneous Petition is also closed. No costs.

01.11.2019

Index: Yes / No  
Speaking order / Non speaking order

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To  
The IV Additional Family Court  
Chennai.

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