

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.03.2019

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.1590 of 2018

Vasanth D. Ramachandran

.. Appellant

-vs-

1. Vishnuvardhan
2. R.Sounderraj
3. R. Inderaj

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 76 of Mental Health Act, 1957 r/w.Order 41 of CPC against the judgment and decree dated 5.4.2018 made in MHOP.No.105 of 2017 on the file of Principal Family Judge, Coimbatore.

For Appellant :Mr.M. Sriram

For Respondents:Mr.R. Bharathkumar
for R2 and R3.
R1 - not ready

JUDGMENT

This Civil Miscellaneous Appeal has been preferred against the judgment and decree dated 05.04.2018 made in MHOP.No.105 of 2017 on the file of the Principal Family Judge, Coimbatore.

2. The appellant herein is the husband. He filed a petition before the Principal District Judge, Coimbatore in M.H.O.P.No.105 of 2017 for appointing the appellant as Guardian of his wife Swati and her properties on the ground that his wife is a mentally retarded person. In support of his case, he produced certain medical documents.

3. At a later point of time, the District Court, for assessing the parties, ordered for appearance of the parties before it and found that the behavior of the wife is normal. At that juncture, the appellant-husband has opted to withdraw the case. The conduct of the appellant was found to be abuse of process of law by the Court below. Therefore a cost of Rs.10,000/- was imposed while permitting the appellant to withdraw the petition for appointment of guardian.

4. While passing the order, the District Court has made certain observations on merit. Aggrieved over the finding on merit given by the court below, the appellant has preferred the present appeal before this Court.

5. Learned counsel appearing for the appellant would contend that the wife has filed a petition for Restitution of Conjugal Rights in O.P.No.972 of 2017 and GWOP.No.970 of 2017 before the Additional Family Court, Coimbatore for custody of the child. Since the wife herself has filed the above petitions, the appellant husband has decided to contest the case on merits and workout his remedy before the concerned courts. Learned counsel also submit that he has not given up right to raise this issue before the other competent court. Therefore, the appellant's contention should not have been negatived by giving a finding on merits. Therefore he would contend that the District Court went wrong in giving a finding on merits.

6. Learned counsel for the respondents, on the contrary, contested that the conduct of the appellant is absolutely abuse of process of law and the District Court having found the conduct and behavior of the wife before the Court has rightly rendered a finding that she is mentally stable, hence nothing to be interfered with. Thus he prayed for dismissal of this appeal.

7. It is an admitted fact that no medical examination was conducted assessing the mental stability of the wife and the matter is not pursued by the petitioner. When a request is made to withdraw the petition, Court shall not give findings on merit. It is admitted that there are other petitions pending before the Court filed by both the parties and the defence is also available to the parties in those petitions. Therefore findings on merit will have an impact in the other proceedings.

8. In view of the above, this Court is of the considered opinion that the finding of the District Court with respect to the merit of the matter i.e., mental stability of the wife while permitting the party to withdraw the petition is beyond its scope. Once the party has filed a petition to withdraw the case, cost can be imposed for the hardship caused to the other side and also for abusing the due process of law. Therefore the following portion of paragraph 7 of the order dated 5.4.2018 made in MHOP.No.105 of 2017 stands expunged.

' This Court has considered the averments made in the above petition and the intention behind such move. But as soon as this court has opinioned that said Swathi is not mentally ill person, ultimate game of the petitioner could not be

achieved by him. It is very unfortunate that the petitioner without any close relatives such as parents were subjected to mental harassment by saying that said Swathi is mentally retarded person and she needs psychiatric treatment. When the court finds the real fact and asked them to go for psychiatric counseling the petitioner does not accept. He wants to withdraw the petition. Since the petitioner has made harassment against his wife and treated her as a psychiatric patient and for her treatment and when the court finds that such contention is actually wrong, he does not want to proceed the case and withdraw the same. '

The remaining portion shall remain as it is.

9. The appellant is directed to pay the cost to the wife directly within a period of two weeks from the date of receipt of a copy of this order. On such payment, the principal District Judge, Coimbatore is directed to issue a copy of revised order expunging the portion as indicated above within a period of four weeks from the date of receipt of a copy of this order.

10. Considering the hardship caused to the wife and also pendency of the sensitive issue, this Court directs the Additional Family Court, Coimbatore to dispose of the HMOP.No.972 of 2017 and GWOP.No.970 of 2017 within a period of six months from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

- 1.The Principal District Judge,
Coimbatore.
- 2.The Ist Additional District Judge,
Coimbatore.

+1cc to Mr.M.Sriram, Advocate Sr.23020
+1cc to Mr.R.Bharathkumar, Advocate Sr.23237

C.M.A.No.1590 of 2018

vsn ii[co]
srg 24/05/2019