

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 25.02.2019

CORAM:

THE HONOURABLE MS. JUSTICE P.T.ASHA

CRP (PD) No.772 of 2018
and
CMP.No.4232 of 2018

S.Meena Gayathri

...Petitioner

Vs

Nagaraj

...Respondent

PRAYER: Civil Revision Petition filled under Article 227 of Constitution of India to set aside the Fair and Decretal order made in I.A.No.302 of 2017 in HMOP.No.229 of 2015 dated 19.01.2018 on the file of the learned Principal Family Judge, Coimbatore. सत्यमेव जयते

For Petitioner

: Mr.C.Veeraraghavan

For Respondent

: Mr.K.Govi Ganesan

ORDER

The application in I.A.No.302 of 2017 is filed by the revision petitioner wife to reject Exs.P6 and P7, which were marked through PW2 in HMOP.No.229 of 2015 on the file of the Principal Family Court, Coimbatore.

2.The brief facts necessary to dispose of the present revision petition is as follows:

The revision petitioner wife has filed an application to declare the marriage between her and the respondent herein as null and void on the ground that the marriage had not been consummated owing to the impotency of the husband. The husband had filed a counter refuting this allegation. Thereafter pending the application, the wife had filed an application in I.A.No.88 of 2016 seeking to direct the Resident Medical Officer, Medical College Hospital, Coimbatore, to examine the respondent in regard to his potency and submit the report. Likewise, the respondent husband has also filed an application in I.A.No.93 of 2016 for a direction to the Resident Medical Officer attached to Coimbatore Medical College Hospital, to examine the petitioner wife to find out as to whether she had retained her virginity and submit the report. Both the applications were allowed and the respective parties have submitted the reports for medical examination.

3. Thereafter, the two reports were marked as Exs.P6 and P7 and the Doctor from the Coimbatore Medical College had been examined as PW2. He would, in the course of his examination submit that the respondent husband has been sent for the purpose of certain tests to the Madras Medical College and after obtaining the reports from the Madras Medical College with reference to this test, the medical board of the Medical College, Coimbatore had finalised their report. The witness was also cross examined by the petitioner, where no questions have been put to PW2 as to how and why the respondent was sent to Madras for medical examination. After marking of these documents and evidence of PW2 was complete, the revision petitioner has come forward with the impugned petition in I.A.No.302 of 2017 to reject both the documents i.e., Exs.P6 and P7, though her dispute was only regarding the respondent/husband being sent to Chennai for some tests.

4. Since the respondent husband had been sent to Chennai for certain tests without obtaining orders of the Court, the petitioner would contend that the Doctor of the medical college hospital, Coimbatore, has exceeded their brief by sending the respondent to Madras medical college without the prior permission of the Court. She would also contend that she

had not been present during the examination and also that she had not been put on notice as to the date of which the respondent is going to be examined. Therefore, it is her case that the two documents has to be eschewed.

5. A detailed counter has been filed by the respondent husband, who would contend that PW2 had been examined only at the behest of the petitioner and no at the behest of the respondent. He would also contend that since the medical examination of the petitioner had gone against her, she wants to have the documents eschewed.

6. The learned Principal Family Judge, Coimbatore, after considering the rival contents in the documents came to the conclusion that the documents cannot be eschewed, since it was only the same test for which the respondent was sent to Chennai and ultimately the report is that of the medical board. The learned Judge therefore dismissed the said petition.

7. Heard Mr.C.Veeraraghavan, learned counsel for the petitioner and Mr.K.Govi Ganesan, learned counsel for the respondent.

8. On perusal of the papers, it is seen that though the complaint of the petitioner is that it is erroneous on the part of the Medical Board, Coimbatore in sending the respondent to Chennai without obtaining orders of the Court below, she also seeks to have her report with reference to her examination also, eschewed without assigning any reason whatsoever. Coming to the issue with reference to the report Ex.P7, it is seen that the Doctor had only sent the respondent for conducting certain tests to Chennai and ultimately, they have only received the report and come to the conclusion after they had examined the respondent husband independently. Therefore, no exception can be taken to the report of the Coimbatore Medical College Board, Coimbatore. That apart, there was no objection on the side of the revision petitioner, when the documents were marked and there has also not been any cross examination of PW2 on the lines as argued now. Further, from the perusal of the order, it is seen that the reports had been made available to the petitioner even prior to the cross examination of PW2.

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9. Considering the above, I do not find any infirmity in the order passed by the learned Principal Family Judge, Coimbatore. It is submitted that the matter is now posted for arguments and considering the fact that the HMOP is of the year 2015, the learned Principal Family Judge shall

dispose of the said HMOP, within a period of 3 months from the date of receipt of copy of this order and report compliance of the same to this Court.

10. Accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

25.02.2019

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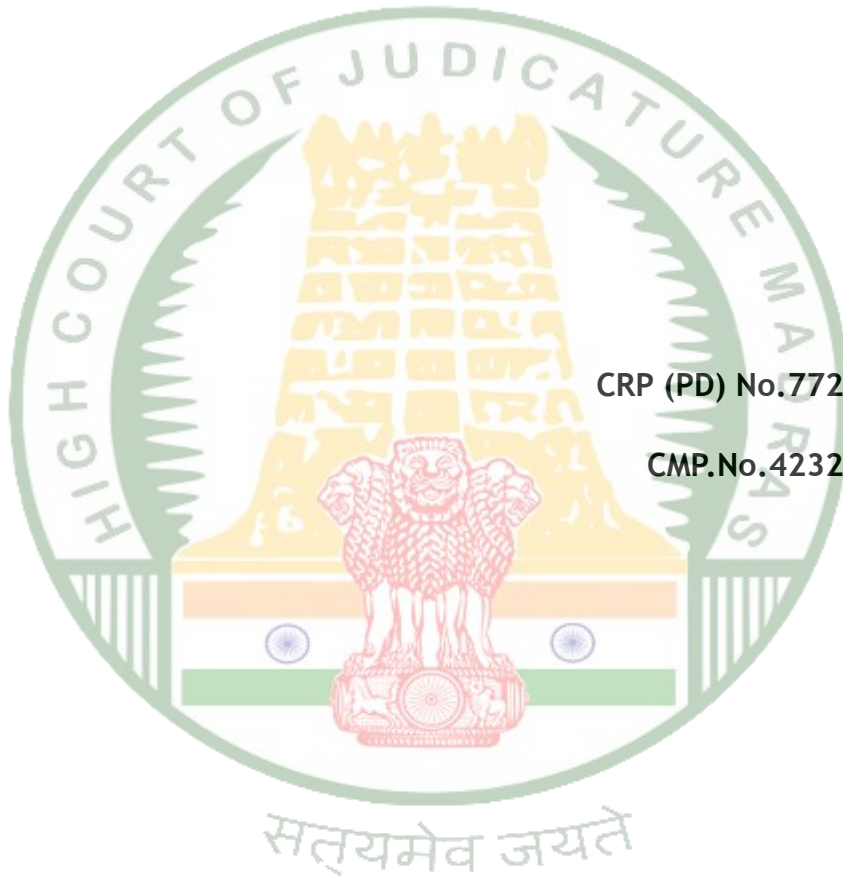
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