

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.04.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD).No.4626 of 2017
and C.M.P.No.21765 of 2017

A. Chockalingam ...Petitioner

Vs

C. Chinnaponnu ...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 24.03.2017 passed in I.A.No.2351 of 2016 in O.S.No.79 of 2012 on the file of the learned Principal Judge, Family Court, Chennai.

For Petitioner : Ms.M.E.V. Thulasi

For Respondent : No appearance

WEB ORDER COPY

The above Civil Revision petition is filed challenging the order passed in I.A.No.2351 of 2016 in O.S.No.79 of 2012 on the

file of the learned Principal Judge, Family Court, Chennai. The said application is filed for submitting one Sasikala, Usharani and Sujatha for a DNA test.

2.The facts in brief are as follows:

The revision petitioner/plaintiff has filed a suit O.S.No.79 of 2012 against the respondent for the following reliefs:

"(a)For declaration declaring that the Sale Deed executed and registered as Document No.917 of 1980 dated 21.07.1980 is a benami Sale Deed in respect of the suit property which had been purchased with the resources of the plaintiff in the benami of the defendant.

(b)For permanent injunction restraining the defendants their men, agents, servants or any other person or persons claiming through her from selling encumbering or alienating the suit property morefully described in the schedule hereunder."

3.The plaintiff has married the respondent and out of wedlock, three daughters were born to them, who are the persons whose DNA test the revision petitioner seeks for. He would submit that he had been living with the respondent since 1965 when she was married to another person Late Sivam and he was also married to one Rajaveni. After 1974, the respondent husband has deserted her and thereafter, the plaintiff and the defendant got married in 1989 and even prior to the marriage, five children were born to them. The children born to his wife Rajaveni were also brought up by the respondent along with her children. He would submit that he had purchased the property benami in her name. He would submit that after marriage of one of the sons, the respondent has got angry with the plaintiff and directed him to vacate the possession of the properties so that she could settle the properties on children. The revision petitioner would submit that it was purchased benami in the name of the respondent. The respondent had filed a written statement stating that she has no connection with the revision

petitioner and that he was working under her husband and that the property was purchased only out of the income earned from out of the various business that he had. The revision petitioner is only assisting her husband and herself and therefore, she would seek for dismissal of the suit. The impugned petition has been taken by the revision petitioner to establish that the respondent and he were in relationship and out of relationship, three children were born. To prove the same, the said petition has been filed. The abovesaid petition was resisted by the respondent/defendant stating that the persons whose DNA test were sought for are not born to the revision petitioner and that they should not be subjected to DNA test and the same was made only with a view to harassing the respondent.

4. The learned Principal Judge, Family Court, Chennai, by his order dated 24.03.2019 was pleased to dismiss the said application. Challenging the said order, the revision petitioner is before this Court.

5.Ms.M.E.V. Thulasi, learned counsel for the petitioner would argue that the revision petitioner and the respondent were in a live in relationship prior to her marriage and out of the wedlock, the children were born. In order to establish their relationship the DNA test is required.

6.Heard the learned counsel for the petitioner and perused the material on record.

7.The suit is filed for declaring the Sale Deed as a benami transaction and the basis on which, the suit has been filed is that the purchase was made in the name of the respondent only on account of the fact that she was the wife of the revision petitioner. It is open to the revision petitioner to file documents to prove this fact. The revision petitioner has filed documents like, Ration Card, Voter ID Card, wedding invitation, and even assuming that the children are submitted for DNA test, the same

is not going to prove the factum of the marriage between the revision petitioner and the respondent. The application is made only with an intent to harass the three ladies who are over 40 years of age. The learned Judge has rightly dismissed the said application. I find no infirmity in the order passed by the learned Principal Judge, Family Court, Chennai.

This Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

02.04.2019

Index : Yes/No
Internet : Yes/No
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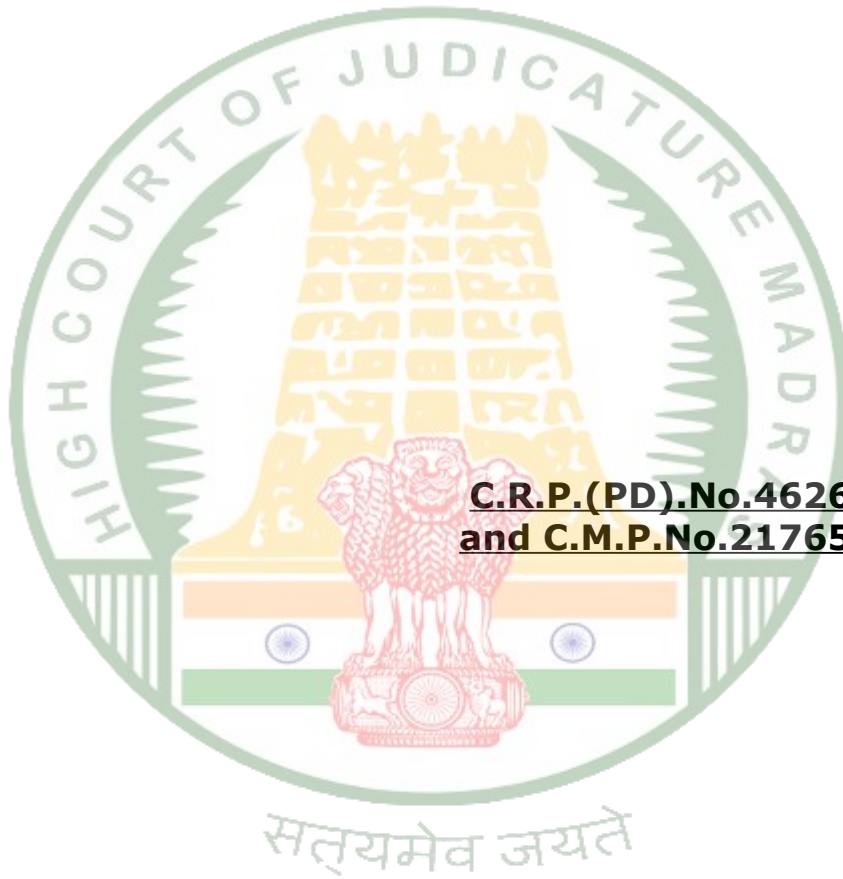
To

The Principal Judge,
Family Court,
Chennai.

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P.T. ASHA, J,

mps



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