

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2019

C O R A M

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P.(PD) NO.3552 OF 2018

AND

CMP NO.19809 OF 2018

S.Joseph Samraj

... Petitioner

Vs.

J.Stella Jemimal

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order in I.A.No.2376 of 2014 in O.P.No.3002 of 2009 on the file of the VII Additional Family Court at Chennai, dated 20.07.2018.

For Petitioner : Mr.S.Chandra Baskaran
For Respondent : Mr.J.Srinivasan

ORDER

This Civil Revision Petition is directed against the dismissal of the petition filed for rejection of divorce petition in I.A.No.2376 of 2014 in O.P.No.3002 of 2009 on the file of the VII Additional Principal Judge, Family Court, Chennai, dated 20.07.2018.

2. According to the petitioner, the respondent / wife got married to one Mr.Premkumar Johnson on 08.09.1986. The respondent got divorce only on 20.08.1993, whereas, she got married with the petitioner on 24.04.1991. Since the marriage between the petitioner and the respondent took place during the subsistence of the previous marriage, it is not valid and non-disclosure of cause of action and barred by Christian Marriage Act and therefore, the petition should be dismissed.

3. Per contra, the respondent contend that after elaborate trial and appreciation of evidence, the Family Court granted decree nisi in I.D.O.P.No.562 of 1989 on 27.06.1990. The confirmation granted by the High Court is a routine procedure. The petitioner/ husband was also well aware of the above said facts and then he accepted to marry the respondent. The petitions are filed only to protract the proceedings and it was decided in I.A.No.2842 of 2012 in O.P.No.3002 of 2009 at an earlier instance itself. Suppressing that, the petitioner has preferred the petition and the same is liable to be dismissed.

4. I have heard the submissions of both sides.

5. From the perusal of the materials, it is seen that the first marriage of the respondent had taken place on 08.09.1986. A decree nisi was granted by the Family Court, Chennai, in I.D.O.P.No.562 of 1989 on 27.06.1990. That means, the marital relationship between the petitioner and her erstwhile husband got severed and it was formally confirmed by the High Court. The confirmation takes effect from the date of grant of decree of divorce. It cannot be presumed that the confirmation of the High Court is the date of grant of decree of divorce. Hence, for all purposes, it should be construed that the decree of divorce was granted on 27.06.1990 and the marriage of the petitioner, which had taken place on 24.04.1991, is not during the subsistence of the previous marriage. Secondly, it is clearly stated that the petitioner was very much aware of the fact that even before the solemnisation of marriage with the respondent on 24.04.1991.

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6. Be that as it may, the petitioner and the respondent have lived as man and wife for 14 years and begot two children. If at all the petitioner came to know of her previous marriage on a later date, he should have filed a petition for declaration of marriage as null and

void. Having lived with the respondent for 14 long years and begot two children, he cannot now take a stand that the marriage is null and void. He cannot also take the plea that he came to know of the fact only after filing of the divorce petition on the grounds of cruelty. The contention of the petitioner is not acceptable. Even assuming that the previous marriage was not informed, the conduct of the petitioner shows that he has condoned the act of the respondent. Therefore, the issue of nullity cannot be raised at this distance of time, that too, after it has been decided against the petitioner in I.A.No.2842 of 2012 in O.P.No.3002 of 2009, by the very same Court in the above proceedings. Further, the cause of action between the petitioner and the respondent would commence only from the date of their marriage i.e. to say on 24.04.1991.

7. It is pertinent to note that the petition for divorce was filed by the respondent on the grounds of cruelty. Cruelty can be alleged only after the parties to the litigation got married. The previous antecedents cannot be a cause of action, that too, in a petition filed by the respondent and therefore, the Trial Court, has rightly approached the issue and considering the long pendency of the petition, has

construed it as a dilatory tactics adopted to protract the proceedings. I do not find any infirmity in the order passed by the Trial Court and it does not require any interference too.

8. Considering the long pendency of the petition viz., O.P.No.3002 of 2009, from the year 2009, the VII Additional Principal Judge, Family Court, Chennai, is directed to conduct trial on day-today basis and complete the same within a period of two months from the date of receipt of a copy of this order.

9. The Civil Revision Petition is disposed of with the above observation and direction. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

27.08.2019

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Index : Yes/No
Internet : Yes/No
Speaking Order/Non Speaking Order
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M. GOVINDARAJ, J.

dua/tk

To

The VII Additional Principal Judge
VII Additional Family Court
Chennai.



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