



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 19.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

CRP(MD)No.1620 of 2019
and CMP(MD) No.8491 of 2019

Saravanakumar

... Revision Petitioner/
Respondent/Petitioner

versus

Tamilselvi

... Respondent/Petitioner/
Respondent

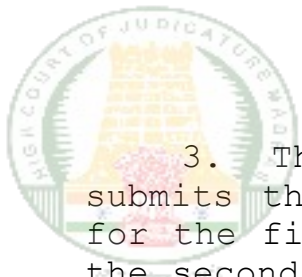
Revision Petition filed under Article 227 of Constitution of India, against the order dated 14.08.2018 passed in I.A.No.376 of 2017 in H.M.O.P.No.57 of 2017 by the learned Subordinate Judge, Sivakasi.

For Revision Petitioner : Mr.S.Rajamohan

ORDER

The revision petitioner is the husband of the respondent herein. He filed a H.M.O.P.No.57 of 2017 against the respondent herein, before the Sub Court, Sivakasi, seeking dissolution of marriage, which was solemnized between them on 06.06.2008, by suspecting the paternity of her second child.

2. The case of revision petitioner is that he married the respondent herein on 06.06.2008 and out of the wedlock, the respondent herein gave birth to a male child on 20.08.2009 and thereafter, due to some misunderstanding, both the revision petitioner and the respondent herein were separated and the respondent herein lived along with her parents. After sometimes, on 08.12.2016, the respondent herein called up the revision petitioner over phone and informed that she was six months pregnant. Suspecting the paternity of her second child, the revision petitioner filed H.M.O.P.No.57 of 2017 against the respondent herein, before the Sub Court, Sivakasi, seeking dissolution of marriage, which was solemnized between them on 06.06.2008. Thereafter, the respondent herein filed I.A.No.376 of 2017 seeking maintenance. After enquiry, the lower Court has directed the revision petitioner to pay Rs.5,000/- each towards maintenance to his two sons. Challenging the same, the present Revision Petition has been filed.



3. The learned counsel appearing for the revision petitioner submits that the revision petitioner is ready to pay maintenance for the first child, but, he does not want to pay maintenance for the second child, since the second child was not born to him. When the divorce petition filed by the revision petitioner by suspecting the paternity of the second child, the order of maintenance to the second child cannot be ordered. Hence, the order passed by the Court below is unsustainable in law.

4. The learned counsel further submitted that the revision petitioner filed another application before the Court below for the purpose of proving the paternity of second child and the same was posted for orders.

5. Heard the learned counsel appearing for the revision petitioner and perused the records.

6. The only issue to be decided in this case is that whether the second child of the respondent herein was born to the revision petitioner or not.

6. The said issue is very crucial and the same can be decided by sending the child and the revision petitioner for DNA test and on receiving the report only, the same can be decided. Therefore, this issue cannot be decided at this stage and it can be decided only by the Court below. Therefore, this Court is not inclined to entertain the Civil Revision Petition. Further, when the application filed by the revision petitioner for the purpose of proving the paternity of the child is pending, without passing any orders in the said application, this Civil Revision petition cannot be entertained.

7. However, the learned counsel appearing for the revision petitioner prayed this Court for speedy disposal of the application filed by the revision petitioner to prove the paternity of the second child, stating that in order to drag on the proceedings, the respondent has not come forward to put forth their arguments while the petitioner's arguments were completed. Considering the facts and circumstances of this Court, this Court is inclined to issue direction to the Court below to dispose of the said application.

8. Accordingly, the Civil Revision Petition is dismissed. However, there is a direction to the Court below to dispose of the application filed by the revision petitioner for the purpose of proving the paternity of the second child, on merits and in accordance with law, within a period of four months from the date of receipt of a copy of this order. No costs. Consequently,



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CRP(MD)No.1620 of 2019

connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CRL.SIDE)

// True Copy //

Sub Assistant Registrar (CS)

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To
The Sub Court,
Sivakasi.

+1 CC to M/s.R.RAJAMOHAN, Advocate (SR-88089[F] dated
20/09/2019)

CRP (MD) No.1620 of 2019

19.09.2019

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