

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.12.2020

PRONOUNCED ON : 14.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CRP(PD)No.3411 of 2016
(Through Video Conferencing)

M.Pandiyan

Petitioner

Vs

Tamilarasi

Respondent

Prayer:- This Civil Revision Petition has been filed, under Section 227 of the Constitution of India, against the fair and decreetal order, dated 10.08.2016, made in IA.No.30 of 2016 in HMOP.No.20 of 2013, by the Subordinate Judge, Vaniyambadi, Vellore.

For Petitioner : Mr.G.Vinodh Kumar

For Respondent : Mr.Sai Krishnan

ORDER

1. This Civil Revision Petition has been filed, against the fair and decreetal order, dated 10.08.2016, made in IA.No.30 of 2016 in HMOP.No.20 of 2013, by the Subordinate Judge, Vaniyambadi, Vellore.
2. The Petitioner is the husband and the Respondent is the wife. The wife has filed the above HMOP.No.20 of 2013, seeking divorce on the grounds of cruelty and desertion. According to the husband, the wife is a mentally retarded person. The husband has filed IA.No.4 of 2016 for production of

medical documents relating to the wife and the said petition was dismissed. Thereafter, again the husband has filed IA.No.30 of 2016 for production of same documents and it was dismissed by the impugned order. Hence, this Civil Revision Petition has been filed.

3. This court heard the learned counsel on either side.
4. The learned counsel for the Petitioner/husband has submitted that the wife is a mentally retarded person and taking treatment for two decades and that since the wife was taking treatment for more than two decades, merely giving evidence before the Trial Court would not amount that she is in a sound state of mind and that since she is a mentally retarded person, she cannot maintain the case. He had further contended that the medical documents sought to be summoned are necessary to decide the issue involved in the HMOP and hence, this Civil Revision Petition is to be allowed.
5. The learned counsel for the Respondent/wife has submitted that the wife has sought for divorce on the grounds of cruelty and desertion and that only to protract the proceedings and to harass the wife, the present IA has been filed and that since the wife, as PW.1, has given evidence in both chief and cross, by answering to all questions properly and clearly, it cannot be said that she was a mentally retarded person, disabling her to maintain the case and hence, this Civil Revision Petition is to be dismissed.
6. This Court has given its anxious consideration to the submissions of the learned counsel on either side and also carefully perused the materials placed on record.

7. The marriage took place between the Petitioner and the Respondent on 16.11.1983 according to Hindu rites and customs. In 2013, the wife has filed the petition seeking divorce on the grounds of cruelty and the husband has also filed a petition for restitution of conjugal rights in HMOP.No.187 of 2015 after lapse of two years.

8. The main contention of the husband is that the wife, as a mentally retarded person, cannot maintain the case and in order to prove the same, medical documents are necessarily to be summoned. In his counter filed in the present HOMP, has took a stand and stated as follows:-

“ஆனாலும் தற்போதைய நிலைபாட்டில் மனுதாரருடன் சேர்ந்து வாழும் சூழ்நிலை எதிர்மனுதாரருக்கும் இல்லை”.

Contrary to this contention, the husband has filed a separate petition for restitution of conjugal rights.

9. HMOP.No.20 of 2013 was filed on 21.03.2013 and the counter was filed on 02.04.2014. The trial had already commenced. PW.1 Wife was examined in chief and the matter was posted for cross examination. It is at this stage that after several adjournments, without cross examining PW.1, IA.No.4 of 2016, seeking to summon the medical documents of the wife, was filed on 10.2.2016. While disposing of the said IA.No.4 of 2016, it was observed that PW.1 was quite capable of understanding all the questions put to her and giving correct answers and that only after cross examination of PW.1, it could be ascertained as to whether she is suffering from mental problem and accordingly, the said IA was dismissed.

10. On a perusal of the present impugned order, it is seen that the court below

has given findings categorically that though the wife has admitted about his mental health and she has taken treatment for the same, however, she, as PW.1, in the cross examination, has answered to all the questions clearly and properly. The court below has also found that to prove his contention, he has not filed the copies of the petition in HMOP.No.187 of 2015 and Tr.OP.No.53 of 2015 and hence, it cannot be said that she is incapable of maintaining and conducting the case on her own.

11.In view of the above, this Court is of the considered view that the reasons assigned by the court below are tenable and that there is no infirmity in the impugned order and that only to protract the proceedings, the husband came up before this Court, which exercise cannot be allowed to continue. This Court also finds no valid reason to interfere with the well reasoned impugned order. Accordingly, this Civil Revision Petition is liable to be dismissed.

12.In the result, this Civil Revision Petition is dismissed. No costs. Consequently, the connected MP is closed.

14.12.2020

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
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To

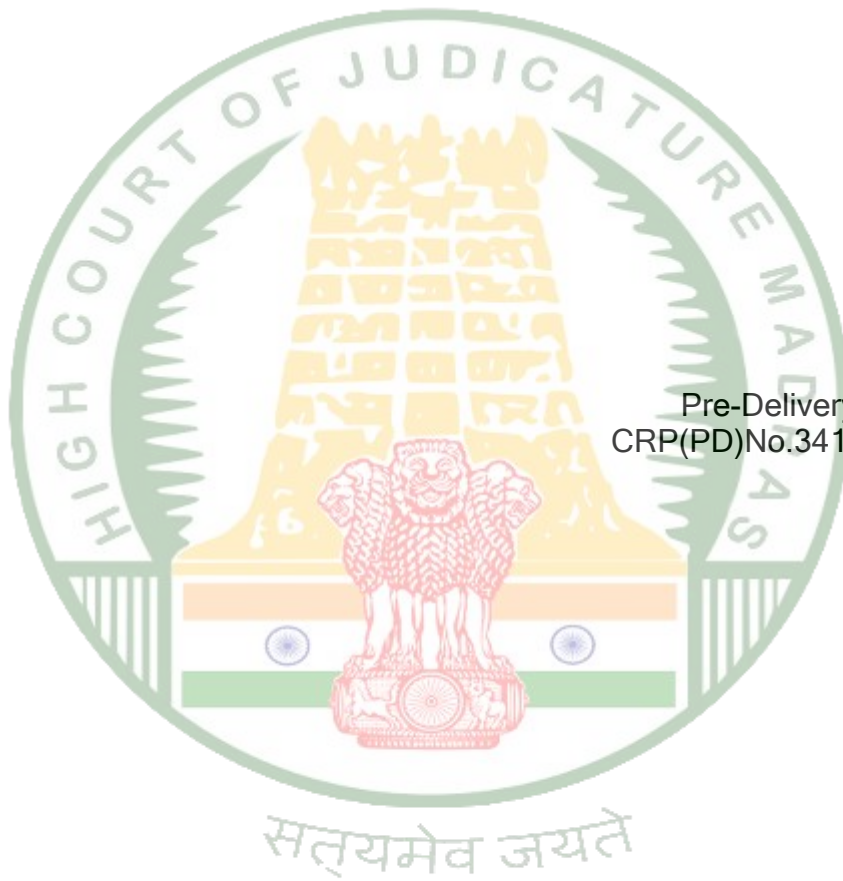
1. The Subordinate Judge, Vaniyambadi, Vellore

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CRP(PD)No.3411 of 2016

A.A.NAKKIRAN, J.

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Pre-Delivery Order in
CRP(PD)No.3411 of 2016

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14.12.2020