



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.09.2020

CORAM:

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

C.R.P. (PD) (MD)No.2553 of 2012

and

M.P(MD).No.1 of 2012

WEB COPY

Kulanthaivelu

...Petitioner/Petitioners/Petitioner

vs.

Viji

...Respondent/Respondent/Respondent

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order in I.A.No.11 of 2012 in H.M.O.P.No.45 of 2006 dated 11.09.2012 on the file of Sub Court, Pudukkottai.

For Petitioner

:Mr.Balakrishnan

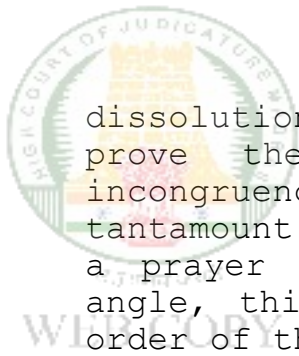
for Mr.K.N.Govardhanan

ORDER

The revision petitioner herein has preferred H.M.O.P.No.45 of 2006 before the Sub Court, Pudukkottai with an amusing prayer under the Provisions of Hindu Marriage Act. The revision petitioner is the husband of the respondent and there is a matrimonial discordance between the parties.

2.It is the case of the revision petitioner that the respondent is living in adultery. However, he has filed the petition primarily for restitution of conjugal rights and in the eventuality of the respondent not joining him, to grant a decree for dissolution of marriage. Since a petition for dissolution of marriage on the ground of adultery requires that the adulterar be impleaded in the petition, the revision petitioner has filed I.A.No.11 of 2012 to implead the adultera. This was opposed and the trial Court dismissed the petition.

3.It has to be made clear that the facts that give the cause of action for restitution of conjugal rights and dissolution of marriage hardly can hardly co-exist. The spouse who does not enjoy the company of the other spouse can file restitution of his/her matrimonial rights and this is incidental and inherent in the very institution of marriage. When a petition for restitution of conjugal rights is so instituted, the burden is on the other spouse/respondent in the petition to show why he/she could not join the other spouse. In other words, in the absence of the respondent in a petition for restitution of conjugal right showing just cause for living separately from the petitioner therein, the relief to the petitioner is automatic. Here, the burden is essentially on the respondent to show cause for separation. In a petition for



dissolution of marriage, the burden is entirely on the petitioner to prove the grounds on which he seeks dissolution. Another incongruency is that if the adulterar is impleaded, then it is tantamount to the petitioner condoning adultery if he has to sustain a prayer for restitution of conjugal rights. Looking from this angle, this Court does not find any lacuna or impropriety in the order of the trial Court.

4. Accordingly, this Civil Revision petition is dismissed and accordingly, the fair and decreetal order in I.A.No.11 of 2012 in H.M.O.P.No.45 of 2006 dated 11.09.2012 on the file of Sub Court, Pudukkottai is upheld. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

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Sub Assistant Registrar(CS)

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To

The Sub Judge, Pudukkottai.

C.R.P. (PD) (MD)No.2553 of 2012
& M.P (MD) .No.1 of 2012
08.09.2020

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