



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.12.2020

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P. (MD) No.110 of 2016 (PD)
and C.M.P. (MD) No. 481 of 2016

J. Kavitha ...Petitioner/Respondent/Respondent

Vs.

R. Mariappan ...Respondent/Petitioner/Petitioner

PRAYER : Petition filed under Article 227 of Constitution of India, against the fair and decreetal order dated 23.11.2015 passed in I.A. No. 64 of 2015 in HMOP No. 736 of 2013 on the file of the Family Court, Madurai.

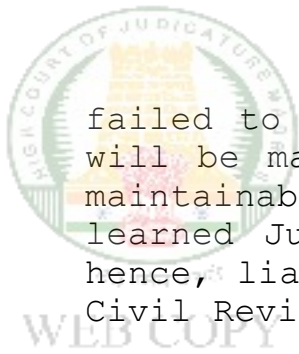
For Petitioner : Mr. R. Vijayakumar
For Respondent : Mr.A. Alexander

ORDER

This petition has been filed, against the fair and decreetal order, dated 23.11.2015 passed in I.A. No. 64 of 2015 in HMOP No. 736 of 2013 on the file of the Family Court, Madurai.

2. The respondent herein/husband has filed a HMOP No. 736 of 2013 against the revision petitioner/wife herein before the Family Court, Madurai, for restitution of conjugal rights. The respondent herein has filed a petition in I.A. No. 64 of 2015 in HMOP No. 736 of 2013 under Section 26 of the Hindu Marriages Act, seeking visitation rights to see his minor son who is under the care and custody of the revision petitioner herein/wife and the same was order in favour of the respondent herein. Therefore, the revision petitioner is before this Court.

3. The learned counsel appearing for the revision petitioner submitted that the Family Court has no jurisdiction to entertain a petition for restitution of conjugal rights when the competent Civil Court has declared that no marriage has taken place between the petitioner and the respondent. He further submitted that the exparte decree in O.S. No. 932 of 2013 was passed on 21.11. 2014 and sofar the respondent has not taken any steps to set aside the exparte decree. He further submitted that the Court below has



failed to see that I.A. No. 64 of 2015 seeking visitation rights will be maintainable only when the main HMOP No. 736 of 2013 is maintainable. He further submitted that the reasons stated by the learned Judge, Family Court, Madurai are sustainable in law and hence, liable to be set aside. Therefore, he prayed to allow the Civil Revision Petition.

4. It is contended by the learned counsel appearing for the respondent that his son is under the care and custody of the revision petitioner herein. It is further contended that he is having love and affection with his son, but the revision petitioner is not permitted to see the minor Son. Hence, he prayed visitation right to see his minor Son.

5. Heard on either side and the perused the material documents.

6. Considering the facts of the case, the petition in I.A. No. 64 of 2015 in HMOP No. 736 of 2013 was allowed and the revision petitioner was directed to produce the Son every first Saturday at Counselling Room, from 10.00 a.m., to 01.00 p.m. Against that order, the revision petitioner was failed to produce the Son. No doubt that there the Court below has passed an ex-parte in O.S. No. 932 of 2013 on 21.11.2014 that no marriage between the parties. But, even as per the averments made in the petition, the Son was born to the revision petitioner and the respondent herein. The respondent herein is father of the minor Son and he has rights to visit his minor Son. Hence, the Family Court, Madurai has rightly allowed the petition I.A. No. 64 of 2015 in HMOP No. 736 of 2013. There is no merits in the revision petition and the same is liable to be dismissed.

7. Accordingly, the Civil Revision Petition stands dismissed. No Costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (AD II)

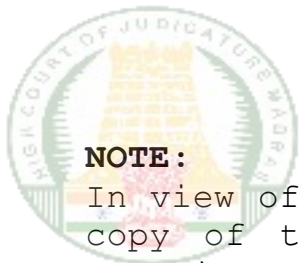
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Sub Assistant Registrar (CS)

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NOTE :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Judge,
Family Court, Madurai.
2. The Section Officer-2 copies
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 cc to Mr.A.Alexander , Advocate SR.No.26797
+1 cc to Mr.R.Vijayakumar , Advocate SR.No.27202

Order made in
C.R.P. (MD) No. 110 of 2016 (PD)
22.12.2020

KM (05.01.2021) 3P 6C