



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.03.2020

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THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P.(MD)Nos.2333 and 2334 of 2019

and

C.M.P.(MD)Nos.12270 and 12272 of 2019

Kavitha

.. Petitioner in both C.R.Ps.

Vs.

Ramamoorthy

.. Respondent in both C.R.Ps.

Common Prayer: These Civil Revision Petitions filed under Article 227 of Constitution of the India, to call for the records of the Family Court, Sivagangai made in I.A.No.4 of 2019 in H.M.O.P.No.10 of 2018 dated 05.11.2019 and to set aside the fair and decreetal order.

For Petitioner (In both C.R.Ps.) : Mr.S.Jayakumar

For Respondent (In both C.R.Ps.) : Mr.N.Rahamadhullah

COMMON ORDER

Heard the learned counsel appearing on either side.

2.These Civil Revision Petitions have been filed against the order passed in I.A.No.4 of 2019 in H.M.O.P.No.10 of 2018 dated 05.11.2019, on the file of the Family Court, Sivagangai.

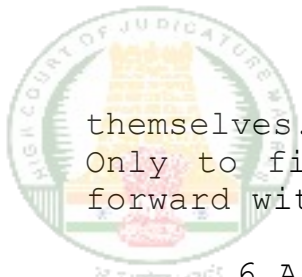
3.The petitioner herein is the wife and the respondent herein is the husband. The husband has filed a petition for divorce. In that case, the wife has filed a petition in I.A.Nos.4 and 5 of 2019 to recall P.W.1 and to reopen the trial.

4.Brief substance of the affidavits in I.A.Nos.4 and 5 of 2019 is as follows:

The main O.P. Is pending for arguments. The case of the husband is that the husband was working in Singapore and from the date of marriage till 2012, he went to Singapore several times and P.W.1 in his evidence has stated that his passport was with the wife. When the wife searched the house, she found the passport. To mark the passport, the trial has to be reopened and the evidence of P.W.1 has to be recalled.

5.The brief substance of the counter in I.A.Nos.4 and 5 of 2019 is as follows:

The wife has admitted that the husband was in Singapore. She has also admitted in H.M.O.P.No.75 of 2017 that the husband was at Singapore and there is no necessity to prove the aforesaid facts by way of passport. If the passport is necessary, it can be marked through the wife. No body can be compelled to give evidence against



themselves. The reason for marking the passport is not elicited. Only to fill up the *lacunae* in the case, the petitioner has come forward with this petition.

6. After considering both sides, the trial Court dismissed the petitions. Against which, the petitioner has filed the revision petitions.

7. On the side of the petitioner, it is stated that the husband filed a divorce petition in H.M.O.P.No.10 of 2018. The wife has filed a petition for restitution of conjugal rights in H.M.O.P.No.75 of 2017 and both the petitions are pending before the Family Court, Sivagangai. When the husband was examined as P.W.1, he deposed that his passport was in the hands of his wife. After searching in the house, the wife traced out the passport and the passport is a necessary document and it should be marked through P.W.1. The case has to be reopened and P.W.1 has to be recalled for marking the passport.

8. On the side of the respondent, it is stated that already the wife filed Transfer civil miscellaneous petition to transfer both the cases and that petitions were rejected. After the entire evidence was over and after the case was four times adjourned for arguments, the petitioner has filed this petition just to drag on the case. It is stated that the allegation against the wife is an illegal intimacy with a third person. The person who is in illegal intimacy with the wife was examined as P.W.2 and he has admitted in his evidence that he was having illegal intimacy with the wife of the respondent and P.W.3 is the wife of P.W.2 and she has also deposed that she has lodged a complaint against her husband, due to illegal intimacy with the revision petitioner. R.W.2, the daughter of the revision petitioner deposed that there was some problem between her father and mother due to one Muthukumar.

9. On the side of the petitioner, it is stated that P.W.1 and 2 are friends of the respondent/husband. Only on his instigation, they deposed against her. The said Muthukumar referred by her daughter, is the brother of the revision petitioner and he is a third person and not P.W.2.

10. On the side of petitioner, it is further stated that earlier the respondent/husband has filed a divorce petition in H.M.O.P.No.64 of 2013 and there was no such allegations at that time. Later the husband has withdrawn the petition.

11. On the side of the respondent, it is further stated that the respondent/husband has already withdrawn the earlier petition. After the filing of the earlier divorce petition, there was a family Panchayat, and due to the result of which the husband withdraw the earlier petition but even after that the activities of the revision



petitioner did not change and that subsequently the husband was forced to file another divorce petition which is pending now.

12.It is seen that there is some problem between the husband and wife and two H.M.O.Ps. are pending. One is for restitution of conjugal rights and other is for divorce. Both the husband and the wife make similar allegation of adultery against each other.

13.Passport is with the wife is admitted by the husband. In the cross examination of P.W.1, he has stated that he has not filed any document to show that he returned back to India in the year 2008. In the counter, the husband has submitted that the document may be marked through the petitioner. Hence, this Court directs the lower Court to permit the revision petitioner to recall herself and to mark the document through her. For marking of the document, the trial has to be reopened and the reopen petition is to be allowed.

14.With the above direction, the civil Revision Petitions are disposed of. The petitioner is at liberty to file a recall petition to examine herself and to mark the passport of the husband. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

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/ /2020

Sub Assistant Registrar(CS)

MRN

To

1.The Judge, Family Court,
Sivagangai.

+2 CC to M/s.S.JAYAKUMAR, Advocate (SR-11817[F] &11818

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