



C.R.P. (PD) No.106 of 2020
and CMP No.679 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Civil Revision Petition (PD) No.106 of 2020
and CMP No.679 of 2020

Priya

.. Petitioner

Vs.

Venugopal

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and final order dated 09.07.2019 in I.A.No.986 of 2018 in H.M.O.P.No.11 of 2015 on the file of Sub Court, Perundurai.

For Petitioner : Mr. S.Kaithamalai Kumaran

For Respondent : Mr.C.A.Ramanan
for M/s.N.Manokaran



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ORDER

This Revision is directed against an order of the Trial Court namely Sub Court, Perundurai, made in IA No.986 of 2018 an application seeking amendment of the petition in HMOP No.11 of 2015. The amendment sought for was to include an alternative prayer for declaration of the marriage as a nullity.

2. The facts leading to the filing of the petition for amendment are as follows:

The respondent/husband filed HMOP No.11 of 2015 seeking divorce on the ground of cruelty claiming that the marriage between the parties took place on 30.01.2012 at Arulmalai Andavar Thirukovil, Thoranavathi Village of Perundurai Taluk. Various allegations regarding cruelty were also made.

3. The respondent/wife resisted the claim contending that the marriage did not take place on 30.01.2012. According to her, the marriage was solemnised only on 24.02.2012, since her earlier marriage was



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dissolved by a decree for divorce only on 21.02.2012. The wife also filed a petition seeking restitution of conjugal rights in HMOP No.53 of 2015.

Both the proceedings were tried together. After the trial was over, the husband came up with IA. No.986 of 2018 seeking an amendment to his petition for divorce. The amendment sought for was to include a prayer for declaration that the marriage is a nullity and to make the prayer for divorce as an alternative prayer.

4. This application was resisted by the respondent/wife contending that the nature of the proceedings will change and that the application is belated. The learned Trial Judge upon a consideration of the rival claims concluded that since the material issue is only with reference to the date of the marriage, which has to be decided upon analysis of the evidence, it won't be proper to reject the application for amendment. Since the evidence regarding the date of marriage is already on record and there is no element of surprise involved in the prayer for amendment, the learned Trial Judge allowed the application for amendment.



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5. I have heard Mr.S.Kaithamalai Kumaran, learned counsel appearing for the petitioner and Mr.C.A.Ramanan, learned counsel appearing for Mr.N.Manokaran, for the respondent.

6. Mr.S.Kaithamalai Kumaran, learned counsel appearing for the petitioner would vehemently contend that the husband cannot blow hot and cold. He has to either admit the marriage and seek divorce or seek a declaration that the marriage is a nullity. He cannot make an alternative prayer for divorce after pleading that the marriage itself is a nullity.

7. Contending contra, Mr.C.A.Ramanan, learned counsel appearing for the respondent would submit that the crucial factor is the date of marriage. If the claim of the petitioner that the marriage took place on 30.01.2012 is admitted, then the marriage would be invalid, inasmuch as, the earlier marriage between the respondent/wife and her erstwhile husband was subsisting as on that date. It is an admitted fact that the decree for divorce of the earlier marriage was granted only on 21.02.2012. The learned



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counsel would also add that whatever the contentions regarding the permissibility of an alternative plea that are sought to be raised in the revision could well be raised before the Trial Court by the respondent, the petitioner herein, as she would be permitted to file an additional counter opposing the amendment.

8. I have considered the rival submissions.

9. The dispute relating to the date of marriage is not new. Even in the original petition, the husband has pleaded that the marriage took place on 30.01.2012. The wife in her counter contended that the marriage took place on 24.02.2012. Therefore, the Court has to first decide the actual date of marriage. It is also not in dispute that the parties have let evidence on the actual date of marriage. The fact whether the marriage took place on 30.01.2012 as alleged by the husband or the marriage took place on 24.02.2012 as alleged by the wife, will have to be decided only after examination of the evidence that is already on record.



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10. All that the husband seeks to do now by this amendment to introduce the prayer for a declaration that the marriage is a nullity. The grant of that prayer would also depend on the conclusion on the date of the marriage. It will be open to the petitioner herein namely the wife to raise all defences open to her on the new prayer that is sought to be made.

11. No doubt there has been some delay in filing the application. In the absence of prejudice, I do not think the delay should be put against the husband in seeking the amendment. The Trial Court had also taken care to compensate the petitioner by imposing costs. I therefore do not think that it is a case where I should interfere with the order of the Trial Court under Article 227 of the Constitution of India. After all the Trial Court has exercised its discretion.

12. Hence the Revision fails and it is dismissed. It is open to the petitioner to file an additional counter rising all pleas that are open to her. The Trial Court shall grant her an opportunity to the parties to lead



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evidence, if they chose to and dispose of the OP in accordance with law.

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Consequently, the connected miscellaneous petition is closed. No costs.

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Index: Yes/No
Internet: Yes
Speaking order
jv

To

1. The Sub Court,
Perundurai.
2. The Section Officer,
V.R.Section,
High Court of Madras.



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R.SUBRAMANIAN, J.

jv

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