

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2021

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(N.P.D) Nos. 180 & 181 of 2020
and
C.M.P.Nos.1021 & 1024 of 2020

KaushalyaPetitioner in both the C.R.P.s
Vs.
Mukesh JainRespondent in both the C.R.P.s

Prayer in C.R.P.(N.P.D) Nos. 180 of 2020:- Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records in I.A.No.469 of 2019 in I.A.No.1987 of 2016 in O.P.No.3852 of 2015 and to set aside the order dated 21.10.2019, passed by the learned VI Additional Principal Judge, Family Court, Chennai.

Prayer in C.R.P.(N.P.D) Nos. 181 of 2020:- Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records in I.A.No.2 of 2019 in I.A.No.469 of 2019 in I.A.No.1987 of 2016 in O.P.No.3852 of 2015 and to set aside the order dated 21.06.2019, passed by the learned I Additional Principal Judge, Family Court, Chennai.

In both the C.R.P.'s:

For Petitioner : Mr.M.L.Joseph
For Respondent : Mrs.S.P.Arthi

COMMON ORDER

These Civil Revision Petitions are filed,

i) to call for the records in I.A.No.469 of 2019 in I.A.No.1987 of 2016 in O.P.No.3852 of 2015 and to set aside the order dated 21.10.2019, passed by the learned VI Additional Principal Judge, Family Court, Chennai, and

ii) to call for the records in I.A.No.2 of 2019 in I.A.No.469 of 2019 in I.A.No.1987 of 2016 in O.P.No.3852 of 2015 and to set aside the order dated 21.06.2019, passed by the learned I Additional Principal Judge, Family Court, Chennai.

2.The learned counsel for the petitioner/wife submitted that the respondent-husband filed a petition in O.P.No.268 of 2006 for divorce before the Family Court, Jodhpur. Exparte decree came to be passed on 29.11.2008. The petitioner filed a petition to set aside the ex-parte decree in I.A.No.1987 of 2016. When this I.A.No.1987 of 2016 was pending for enquiry, the respondent filed a petition in I.A.No.469 of 2019 under Section 151 of C.P.C., read with Section 10 of the Family Court Act, seeking leave to produce the documents enlisted in the annexure. However, no annexure

was given. Therefore, I.A.No.2 of 2019 was filed seeking permission to amend the I.A.No.469 of 2019 by enclosing the relevant documents mentioned in the annexure to I.A.No.469 of 2019. Both the applications were contested by the petitioner. On considering the rival submissions, the learned VI Additional Principal Judge, Family Court, Chennai, allowed the I.A.No.469 of 2019 on 21.10.2019 and the learned I Additional Principal Judge, Chennai, allowed the I.A.No.2 of 2019 on 21.06.2019. Against these orders, the present Civil Revision Petitions were preferred.

3. The learned counsel for the petitioner submitted that the divorce petition was filed in the year 2006 before the Family Court, Jodhpur. Thereafter, it has been transferred to the Family Court, Chennai, and it is pending before the VI Additional Principal Judge, Family Court, Chennai. Already an objection was taken with regard to the delay and the learned Family Judge, Jodhpur, has found that there was no delay in the petition to set aside the ex-parte decree. When a petition to set aside the ex-parte decree was pending for enquiry, a petition to receive documents and then to amend the petition to receive the documents has been unnecessarily filed by the respondent/husband only to drag on the proceedings. The documents

sought to be produced are not at all relevant for the purpose of disposal of ex-parte decree set aside petition. Without considering these aspects, the learned Trial Judges, allowed the petitions and the learned counsel for the petitioner prayed for setting aside these orders.

4.In response, the learned counsel for the respondent submitted that after the ex-parte order of divorce was granted, the respondent contracted second marriage and there is also a female child born out of the second marriage. During the course of enquiry, in the ex-parte decree set aside petition, the petitioner was examined, and she gave lengthy evidence and she was also cross-examined. When the matter was pending for examination of witness on the side of the respondent, the petition to receive document was filed. These documents are absolutely necessary to counter the case of the petitioner and to prove the case of the respondent. Further, the petitioner is not entitled to set aside the ex-parte decree. The learned Trial Judges considering the necessity of allowing these documents as evidence, allowed the petitions. Therefore, he prayed for dismissal of these Civil Revision Petitions.

5.Considered the rival submissions and perused the records.

6.The issue involved in these Civil Revision Petitions is very limited, as to whether the respondent can be permitted to produce the documents. The documents sought to be produced in Item Nos.1 to 5, & 7 had come into existence prior to 29.11.2008. Item No.9 to 11 had come into existence after passing of ex-parte decree of divorce (i.e) on 29.11.2008. Most importantly, it is seen from the marriage certificate dated 19.04.2010, the respondent had contracted the second marriage. Now the petitioner wants to set aside the ex-parte decree dated 29.11.2008. The out come of ex-parte decree set aside petition would have a bearing on the status of the second marriage.

7.Therefore, this court is of the considered view that the Item Nos.9 to 11 are absolutely necessary for the proper appreciation of the I.A.No.1987 of 2016. So far as the other documents namely Item Nos.1 and 3 are concerned, it appears that there are criminal proceedings between the petitioner and respondent and those documents are sought to be produced. Other documents like Item Nos.4 and 5 are produced to show the change of address of the respondent. Item No.2 is the sale deed sought to be produced for the purpose of showing that the petitioner's brother has house in

Jodhpur. These documents are one way or other relevant for the purpose of disproving the case of the petitioner and for proving the case of the respondent. Therefore, they cannot be considered as irrelevant documents. In this view of the matter, this court finds no reason to interfere with the orders of the learned Trial Judges in allowing the I.A.No.2 of 2019 dated 21.06.2019 for amending the I.A.No.469 of 2019 and order in allowing the I.A.No.469 of 2019 dated 21.10.2019 and the orders are hereby confirmed.

8.Accordingly, these Civil Revision Petitions are disposed of. Before concluding, this Court directs, considering the fact that the O.P. is of the year 2015 and the petition to set aside the ex-parte decree in I.A.No.1987 of 2016 is said to have been filed in time, the learned VI Additional Principal Judge, Family Court, Chennai, is directed to dispose of I.A.No.1987 of 2016 as expeditiously as possible, preferably within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

ep/Jer
Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No

13.09.2021

To

1. The VI Additional Principal Judge,
Family Court, Chennai.
2. The I Additional Principal Judge,
Family Court, Chennai.
3. The Section Officer,
VR Section,
High Court of Madras.



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G.CHANDRASEKHARAN.J,

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