

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2021

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P. (PD) No.1007 of 2021
and
C.M.P.No.8109 of 2021

K.Sekar

..Petitioner/Petitioner/Petitioner

Vs

A.Mageshwari

..Respondent/Respondent/Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 12.02.2021 in I.A.No.206 of 2019 in H.M.O.P.No.119 of 2018 on the file of the Principal Subordinate Court at Ponneri.

For Petitioner

..

Mr.Jeremiah Gregory John

For Respondent

..

No appearance

ORDER

Heard the learned counsel for the petitioner.

2.I am not impressed with the arguments advanced by the learned counsel for the petitioner. The revision petitioner is also the petitioner in H.M.O.P.No.119 of 2018 which is now pending on the file of the Subordinate Court, Ponneri. The revision petitioner / husband had filed the said H.M.O.P.No.119 of 2018 seeking dissolution of the marriage on the ground of nullity.

3.He claimed that there was no marriage at all. The parties went to trial. The petitioner herein examined himself as PW-1 and he was also cross-examined. Thereafter, basing on the fact that the respondent herein had given a complaint to the All Women Police Station, Ennore, on 06.06.2018 and a report/letter had been received from the District Social Welfare Protection Officer, Tiruvallur, on 24.07.2018, an application was filed to amend the pleading in H.M.O.P.No.119 of 2018 seeking an additional ground of cruelty.

4.The said application came up for consideration before the learned Subordinate Judge, Ponneri on 12.02.2021 and the learned Judge dismissed the said application.

5.Mr.Jeremiah Gregory John, learned counsel for the petitioner relied on the judgment in *Deepali Vs. Pankaj Gupta* reported in (2006) 144 PLR 449, wherein, a learned Single Judge of the Punjab and Haryana High Court had stated that when pending a petition, further relief of annulment of marriage under Section 12(1)(C) of the Hindu Marriage Act, can be introduced. The application was filed because the petitioner therein had changed his advocate and a new advocate came into the picture and advised the petitioner that an additional ground can be sought for seeking divorce. The learned Judge had thereafter however examined the issues and permitted such amendment. The said ratio does not apply to the facts of this case.

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6.Here the Original Petition was filed on the ground of nullity of the marriage. Thereafter, by way of an amendment, dissolution of marriage is sought on the ground of cruelty.

7. In the first instance, the petitioner herein should accept the validity of the marriage. Only thereafter, can he seek for divorce on the ground of cruelty. The petitioner having been cross-examined, had thereafter filed the present application.

8. I concur with the entire reasonings given by the learned Subordinate Judge, Ponneri, about the improbability of the relief which is now sought when compared with the relief on which the Original Petition was first filed. The learned Judge had also stated that the petitioner had filed this application only to fill up the lacuna of the admissions that had been made in the cross-examination. The petitioner will have to face the admissions, he cannot go around and file an application for amendment.

9. Reliance had also been placed on a judgment of the Hon'ble Division Bench of this Court in ***C. Rajamani Vs. C. Rathnabai*** reported in ***2009 (4) CTC 213***. The Hon'ble Division Bench had stated that it is the discretion of the Judge who conducts the trial to decide whether to permit amendment and stated though there was an embargo to permit amendment under the provision of CPC subsequent to commencement of trial, still a small window is given for discretion and the Hon'ble Division

Bench therefore stated that such discretion can be used in appropriate cases.

10.The facts in the present case are totally different. The petitioner herein had filed an application seeking amendment on the basis of admissions made by him during cross-examination and to fill up that lacuna.

11.I am not impressed with the arguments advanced by the learned counsel for the petitioner and I concur with the order passed in I.A.No.206 of 2019 by the learned Subordinate Judge, Ponneri.

12.This Civil Revision Petition is dismissed. No order as to costs. Consequently, the connected Civil Miscellaneous Petition is closed.

13.The petitioner herein is directed to participate in the trial proceedings.

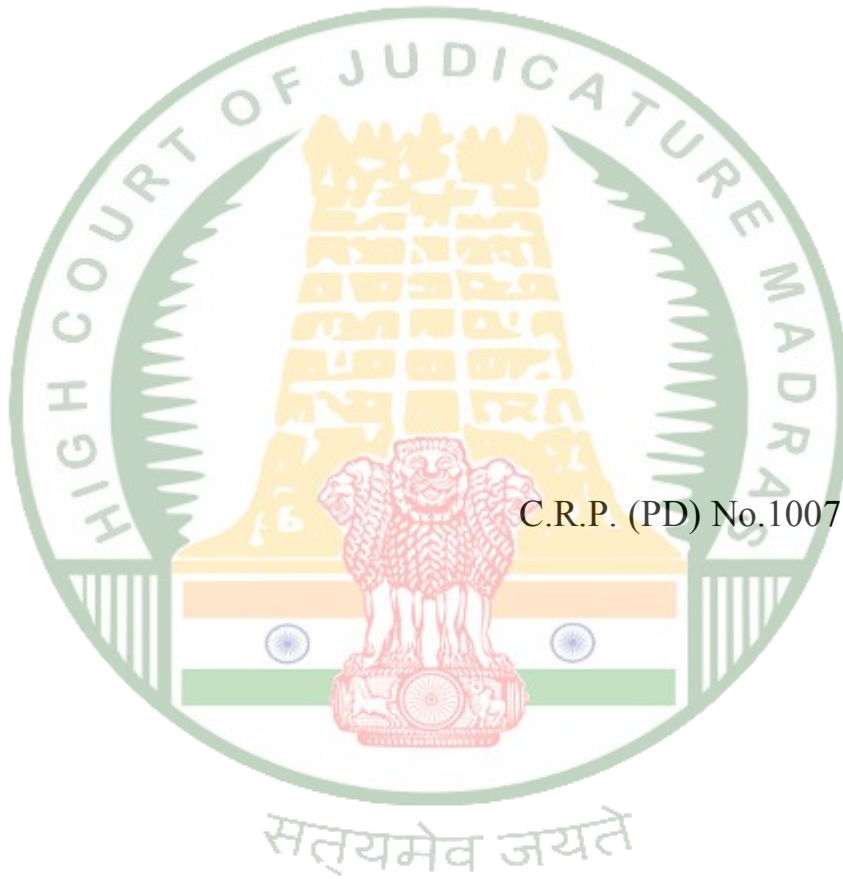
30.04.2021

Internet:Yes/No
Index:Yes/No
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To
The Subordinate Court,
Ponneri.

C.V.KARTHIKEYAN,J.

smv



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