

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(PD).No.641 of 2018
and C.M.P.No.3307 of 2018

Vinayagam

... Petitioner

Vs

Datchayani

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decree dated 20.12.2017 made in I.A.No.500 of 2016 in F.C.O.P.No.176 of 2015 on the file of Family Court, Vellore.

For Petitioner : No Appearance

For Respondent : No Appearance

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ORDER

This Civil Revision Petition is filed against an order and decree dated 20.12.2017 made in I.A.No.500 of 2016 in F.C.O.P.No.176 of 2015 on the file of the Family Court, Vellore, thereby dismissing the petition for amendment.

2. The petitioner is the husband and the respondent is the wife. The petitioner filed a divorce petition on the ground of cruelty. While pending the divorce petition, the petitioner filed a petition for amendment to amend the prayer as follows:

"1. Add para 11(a), 11(b) and 11(c) below the para 11

11(a). The petitioner state that the marriage between the petitioner and respondent was took place on 15.11.1996 but respondents was not conceived hence from 20.12.2012 various treatments were taken by both the petitioner and respondent at Aakash Fertility Centre & Hospital at Chennai but in vein, finally the doctors advised to take baby by way of test tube

baby method and the petitioner also agrees to test tube baby but due to lack of healthy sperms the doctors postponed the treatment.

11(b). The petitioner state that the respondent was a subscriber of monthly chit and the said chit was matured by the end of year 2013 and she gave loan of Rs.2 lakhs to one Elumalai S/o.Settu @ Subramani of Ammundi Village in year end of 2013 later the Respondent and Elumalai have developed illicit relationship and whenever the respondent gone to hospital the said Elumalai is also accompanied by her on 20.04.2014 the respondent gone to Aakash Fertility Centre & Hospital, and the petitioner went to hospital afternoon for check up, there said Elumalai is accompanied by the respondent and there was a wordy quarrel between the petitioner and the respondent and respondent gone with the said Elumalai and treatment at Aakash hospital also stopped from 20.04.2014. From the said date onwards the petitioner never had access with respondent and there is no cohabitation between the petitioner and respondent and the petitioner

changed his mind and he is not willing to get baby by way of Test Tube baby treatment, and respondent also voluntarily withdrawn the company and society from 20.04.2014. But without the knowledge, consent and approval of the petitioner the respondent seems to have begotten a baby by name Brindha on 17.09.2015. The respondent did not say about the Test tube baby treatment and whose sperm was used for Test tube baby thereby this respondent reliably came to know that the respondent might have conceived by way of Immoral and illicit cohabitation with the said Elumalai, therefore the petitioner specifically denies the paternity of the child by name Brindha begotten by the respondent thereby the petitioner is not the biological father of the child by name Brindha and the respondent leading immoral and illegal life with the said Elumalai. The respondent issued reply notice on 27.07.2015 and the baby was born on 17.09.2015 as such respondent must be at 7 & 8 months of pregnancy on the date of issuing reply notice but the pregnancy and mode of pregnancy was not stated in her reply.

11(c). The petitioner state that the respondent begotten the child by name Brindha out of the illegal intimacy with the said Elulmalai. Therefore the respondent having voluntary sexual intercourse with other than her spouse thereby the marital relationship between the petitioner and the respondent came to an end and the petitioner is entitled to get divorce on the ground of desertion and illicit intimacy with third person.

2. Remove the existing section of petition replace with the following section 13(1)(i)(ia) in the preamble section of petition.

3. Remove the word "several Person" in para 12 second line and replace the name Elumalai S/o.Settu @ Subramani.

4. add the word "and illicit intimacy" after the word cruelty in prayer (a) of petition in F.C.O.P.No.176/2015.

Dated this the 27th day of January 2017 at Vellore."

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3. On a perusal of the amendment, the petitioner made serious allegations and had completely changed the nature of the divorce petition, since the divorce petition filed on the ground of cruelty. Therefore, the

Court below rightly dismissed the petition. This Court finds there is no infirmity and illegality in the order passed by the Court below.

4. Accordingly, this Civil Revision Petition is dismissed. No order as to costs. However, the learned counsel for the petitioner expressed the possibility to re-union. Therefore, the petitioner may very well express the possibility to re-union with the respondent. Consequently, the connected miscellaneous petition is closed.

29.04.2021

Internet:Yes
Index:Yes/No
rna

To

The Family Court,
Vellore.

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G.K.ILANTHIRAIYAN. J.

rna



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