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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP No.2831 of 2021

and

CMP.No.20521 of 2021

Dr.Rajiv Verghese

... Petitioner / Petitioner

Vs

Rosy Chakkramakkil Francis

... Respondent / Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order of the learned VII Additional Family Court, Chennai passed in I.A.No.3 of 2021 in I.A.No.1 of 2019 in IDOP.No.1284 of 2019 dated 08.10.2021.

For Petitioner : Mr.S.Namasivayam

O R D E R

The petitioner challenges an order dismissing the application in I.A.No.3 of 2021 filed by him seeking rejection of I.A.No.1 of 2019 filed under Section 36 of the Divorce Act for interim maintenance pending in IDOP.No.1284 of 2019. The main ground on which the petitioner sought for rejection of the application for interim maintenance was that the wife/respondent, who had converted to Hinduism and has married a Hindu after dissolution of marriage had not re-converted to Christianity and she remains the Hindu. Therefore, according to him, the marriage between him and the respondent solemnized under the Christian Marriage Act is not valid.

2.The learned Family Judge, who heard the application concluded that the question whether the wife had re-converted to Christianity or whether such re-conversion is necessary at all will have to be gone into only while deciding the original petition and the same cannot be decided at an Interlocutory stage in order to throw out an application for interim maintenance. On the above conclusion, the Family Court dismissed the application.



3.Mr.Namasivayam, learned counsel appearing for the husband would vehemently contend that the question whether an application under Section 36 could be filed by a Hindu wife in a proceeding under the Indian Divorce Act has to be decided by this Court. According to him, once the wife admits that she had converted to Hinduism and married a Hindu, proof of re-conversion is mandatory for her to get married to Christian under the Christian Marriage Act and to seek interim maintenance in an application filed by the husband under the Divorce Act.

4.I am unable to agree with the learned counsel for the present, inasmuch as the Family Court has not chosen to decide the question. It has only pointed out that this question which is a complicated question of law and fact will have to be decided on evidence and the same cannot be subject matter of decision in an Interlocutory Application.

5.The supervisory jurisdiction of this Court under Article 227 of the Constitution of India, is only a corrective measure and this Court cannot perform the functions of a trial Court or the Appellate Court while deciding matters under Article 227 of the Constitution of India.

6.No doubt, such corrective measure can even extend to this Court substituting its own orders for the orders that were passed by the trial Court or the Appellate Court, but I do not think it can extend to this Court exercising the jurisdiction of the trial Court or the Appellate Court. I am therefore unable to entertain this revision under Article 227 of the Constitution of India.

7.This revision stands dismissed. It is made clear that all questions that are raised in the IDOP as well as the interim maintenance application in I.A.No.1 of 2019 shall be decided by the learned Family Judge without being influenced by any of the observations made therein or in the order impugned in this revision. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar

vs



To:

The VII Additional Principal Judge,
Family Court,
Chennai.

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+1cc to Mr.S.Namasivayam, Advocate, S.R.No.68555

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