



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.04.2021

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

C.R.P.(MD).No.740 of 2021

and

C.M.P.(MD)No.4009 of 2021

Kadalrajan : Petitioner/ Petitioner/Respondent

Vs.

Malarkodi :Respondent/Respondent/Petitioner

PRAYER : Civil Revision Petition has been filed under Section 227 of Constitution of India, to set aside the fair order and Executable order dated 26.02.2021 made in I.A.No.1 of 2020 in P.O.P.No.1 of 2014 on the file of the Principal Sub Court (FAC), Dindigul.

For Petitioner : Mr.R.Suriyanarayanan

ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.1 of 2020 in P.O.P.No.1 of 2014, dated 26.02.2021 on the file of the Principal Sub Court (FAC), Dindigul.

2.For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in the trial Court.

3.The revision petitioner is the respondent in the Original Petition and the respondent herein has filed a petition under Order 33 Rule 1 and Order 7 Rule 1 of C.P.C, to declare her as an indigent person and claiming maintenance by alleging that she is the wife of the revision petitioner.

4.The revision petitioner/defendant has filed an application in I.A.No.1 of 2020 under Section 151 Cr.P.C, to decide the objection raised by him as to the maintainability of the P.O.P.No.1 of 2014 as a preliminary issue. In the affidavit filed in support of the above petition, he has raised so many aspects that the main original petition does not reveal any cause of action, that the petitioner has suppressed various matrimonial proceedings alleging that one Murugesan was her husband, that the claim of the petitioner is barred by *res judicata* and that the filing of the above original petition would only amounts to clear abuse of process of law and relitigation.



5.The learned trial Judge, after conducting enquiry, has passed the impugned order on 26.02.2021, by holding that the enquiry in P.O.P.No.1 of 2014 is in the half way and the revision petitioner has also participated in the enquiry, that the petitioner can raise all these grounds in the said enquiry itself and that therefore, filing of the above petition is redundant, dismissed the said petition.

6.It is pertinent to mention that the above original petition was filed in the year 2014 and according to the learned counsel for the revision petitioner, the respondent has filed his counter statement in the year 2015 itself. If that be so, I am at loss to understand as to why the respondent has been waiting to file the above application for deciding the maintainability of the petition. No doubt, Order 33 Rule 5 contemplates the grounds for rejection of the application filed under Order 33, as the same can be filed at any stage, but in the case on hand, as already pointed, the original petition has been pending for the past more than 7 years and even after filing of the counter statement in the year 2015, the respondent has not chosen to file such an application and when the petition is in part-heard stage, he has come forward with the above application.

7.As rightly observed by the learned trial Judge, the aspects now canvassed by the petitioner can very well be taken in the said enquiry itself. Considering the above, the decision of the trial Court in dismissing the application cannot be found fault with. Consequently, this Court is not inclined to admit the revision.

8.In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

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Sub Assistant Registrar(CS)

das



To

The Principal Sub Judge (FAC),
Dindigul.

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