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C.R.P(PD)No.923 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2022

CORAM:

Mr. JUSTICE N.SESHASAYEE

C.R.P(PD)No.923 of 2022
& CMP.No.4728 of 2022

Tmt.Jaya

... Petitioner

Vs.

V.Hariharan

... Respondent

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, to direct the Family Court Judge, Salem in F.C.O.P.181/2010 to receive the unnumbered I.A. of 2021 in F.C.O.P.181/2010, presented on 24.09.2021, and to adjudicate the same.

For Petitioner : Mr.V.Raghavachari

ORDER

The respondent in FCOP.No.181 of 2010 has come forward with the Revision. The learned counsel for the revision petitioner submitted that the revision petitioner was married to the respondent but, the respondent has concealed his earlier marriage. The respondent herein has preferred FCOP.No.181 of 2010 for dissolution of marriage on grounds of cruelty and desertion.



2.The learned counsel added that the revision petitioner has preferred a complaint against the respondent and his family members for offences under Section 498 A, 406, 506 (ii) r/w Section 3 and 4 of Dowry Prohibition Act, based on which, a FIR in Crime No.11 of 2010 came to be registered by the Ammapettai Police Station, Salem. The investigation of the said case is complete and a final report too was laid, based on which, the Court has taken cognizance of the offence and it was taken in C.C.No.81 of 2011.

3.In the meantime, the revision petitioner had taken an Application in I.A.No.240 of 2021 in F.C.O.P.No.181 of 2010 under Section 27 of the Hindu Marriage Act for return of articles and that came to be allowed on 31.08.2021, by which, the petitioner was permitted to mark the documents. The original documents, which the petitioner intended to mark have already been submitted to the police and it became part of the final report involved in C.C.No.81 of 2011. The learned Family Judge however, objected to mark the xerox copies of the document that she wanted to produce.



4. Thereafter, the petitioner filed an Application seeking for the original document pending on the records of C.C.No.81 of 2011. The learned counsel submitted, the learned Family Judge refused even to receive the same. A copy of the same is enclosed in page 47 of the typed set of papers.

5. The learned counsel for the revision petitioner submitted that to the extent the revision petitioner is given to understand the entire papers in C.C.No.81 of 2011 on the file of Judicial Magistrate IV, Salem is missing on the files of the Court.

6. Since the point raised in this case involves only certain procedural aspects, which in no way is likely to affect the rights of the respondent, this Court chose not to order notice to the respondent.

7. Every litigant has a right to adduce the best evidence and where the best evidence cannot be produced, then the Court is duty bound to receive the secondary evidence of the same. Here is a scenario where the learned Family judge is stated to have rejected the xerox copies of certain documents because they are not primary documents but, when the petitioner seeks production of primary documents, which according to him is part of the



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record in C.C.No.81 of 2011, the attempt was not welcomed either.

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8.This Court does not want to get into the details more, except that it directs the petitioner to present the said Application to send for such documents which are specifically required by the Revision Petitioner from C.C.No.81 of 2011. Upon their production, they may be marked or the duly certified copies of these documents may be marked by the family Court and the original thereof may be returned to the learned Magistrate.

9.Since this Court is given to understand that the entire records in C.C.No.81 of 2011 may have been misplaced in the Judicial Magistrate IV, Salem, necessarily they have to be retrieved. Therefore, this Court requires the attention of the Chief Judicial Magistrate, Salem in the matter and to report to this Court the availability of the original records in C.C.No.81 of 2011.

10.The Civil Revision Petition is accordingly disposed of. No costs.

17.03.2022

Index : Yes/No
Internet : Yes / No



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Speaking /Non Speaking

Tsg

Note: Issue order copy on 22.03.2022

To

1.The Chief Judicial Magistrate,

Salem.

2.The Family Court Judge, Salem.



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N.SESHASAYEE, J.,

Tsg

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