



C.R.P. (PD) No.2598 of 2021
and CMP No.19277 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Civil Revision Petition (PD) No.2598 of 2021
and CMP No.19277 of 2021

Mr.S.A.Saktheesh
Rep. By his father and Power of Attorney,
Mr.K.Subramonia Pillai,
No.7, Bharathi Street, Ellapillai Chavady,
Puducherry 605 005.

.. Petitioner

Vs.

Ms. R. Aishwarya

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to issue directions directing the III Additional Family Court to include the reliefs namely b,c,d,e and f of the HMOP No.3306 of 2021 filed by the petitioner.

For Petitioner : Mr.U.Manogar

For Respondent : Mr.Thomas T Jacob



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ORDER

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The challenge in this Revision is to the order of the Family Court directing numbering of HMOP partially and rejecting the other prayers with a direction to the petitioner to file separate petitions under Section 27 of the Hindu Marriage Act.

2. The petitioner who is the husband sought for divorce, return of property, damages as well as compensation for mental and emotional injuries suffered by him during the course of the marriage. The Family Court questioned the maintainability of the said petition. The return endorsements were made by the learned counsel appearing for the petitioner justifying the prayers.

3. The learned Family Judge, however, directed the Registry to take case on file only under Section 13(1)(i-a) of the Hindu Marriage Act and requiring the petitioner to file separate applications under Section 27 of the Hindu Marriage Act for the other reliefs.



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4. Heard Mr.V.Prakash, learned Senior Counsel appearing for Mr.U.Manogar for the petitioner and Mr.Thomas T.Jacob, learned counsel appearing for the respondent.

5. Mr.V.Prakash, learned Senior Counsel appearing for the petitioner would vehemently contend that Section 27 of the Hindu Marriage Act, authorises the Court to make arrangements for disposal of property in a proceeding under the Hindu Marriage Act, he would also fall back upon Section 7 of the Family Courts Act, which provides for matters which would be within the jurisdiction of the Family Court. According to Mr.V.Prakash, the second prayer sought for by him would come within Clause (d) of Sub Section (1) of Section 7, the prayer relating to property of the spouses would come within Clause (c) of Sub Section (1) of Section 7. He would also submit that the prayer for damages would come within the sweep of Clause (d) of Sub Section (1) of Section 7.

6. Mr.Thomos T.Jacob, learned counsel appearing for the respondent would submit that though prayers 'a', 'b', 'c' and 'd' would come within



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the sweep of Section 7 of the Family Courts Act, prayers 'e' and 'f' which are for damages will not fall within the jurisdiction of the Family Courts, since they do not come within any of the Sub Clauses of Sub Section (1) of Section 7. He would also submit that it is open to the respondent to file a separate suit before the ordinary Civil Court seeking such prayers for damages.

7. I have considered the submissions of the learned counsel on either side.

Section 27 of the Hindu Marriage Act, reads as follows:

27. Disposal of property.—*In any proceeding under this Act, the court may make such provisions in the decree as it deems just and proper with respect to any property presented, at or about the time of marriage, which may belong jointly to both the husband and the wife.*

Section 7(1) of the Family Courts Act, reads as follows:



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7. Jurisdiction.—(1) *Subject to the other provisions of this Act, a Family Court shall—*

(a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district Court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

Explanation.—The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:—

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or



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dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order or injunction in circumstance arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

8. A reading of both these provisions together would make it abundantly clear that a prayer regarding properties of the spouses would be within the jurisdiction of the Family Court. A prayer for injunctive reliefs



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arising out of matrimonial relationship would also be within the jurisdiction of the Family Court. But a prayer for damages arising out of matrimonial relationship, in my considered opinion, cannot be considered has to be one falling under Clause (d) of Section 7(1) of the Family Courts Act. Section 7(1)(d) states that a suit or proceeding for an order or injunction in circumstance arising out of a marital relationship, this in my considered opinion would not include a prayer for compensation for mental and emotional injuries suffered or for punitive damages.

9. Therefore, the Family Court was right in rejecting prayers 'e' and 'f' even at the stage of numbering as the same would not be within the jurisdiction of the Family Court. Insofar as the other reliefs namely 'b', 'c' and 'd', the Family Court's order is set aside and the Family Court is directed to number the OP for reliefs 'a' to 'd' and proceed with it in accordance with law. Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs.

31.01.2022



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Index: No
Internet: Yes
Speaking order

To

1. The III Additional Judge,
Family Court, Chennai.
2. The Section Officer,
V.R.Section, High Court of Madras.



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R.SUBRAMANIAN, J.

jv

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