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C.R.P.Nos.190 and 251 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.Nos.190 and 251 of 2022
and
C.M.P.Nos.1011 and 1243 of 2022

Priya

... Petitioner (in both CRPs)

VS

1.Velvijay

... Respondent (in both CRPs)

2.R.Srinivasan

... Respondent
(in C.R.P.No.251/2022)

Common Prayer: Civil Revision Petitions are filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 12.10.2021 made in I.A.Nos.2 and 3 of 2021 in F.C.O.P.No.319 of 2018 on the file of the learned Family Court Judge at Salem.

For Petitioner : Mr.T.Sundaravadanam
(in both CRPs)

For R1 : Mr.P.Haribabu
(in both CRPs)

For R2 : No Appearance
(in CRP.No.251/2022)



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COMMON ORDER

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2. The 1st respondent herein filed a petition for divorce on the ground of cruelty against the petitioner herein in F.C.O.P.No.319 of 2018. In the original petition, the 1st respondent herein/petitioner therein *inter alia* has stated that on 16.02.2016 when the 1st respondent returned to the matrimonial home at about 12.00 noon, he had seen the petitioner herein along with one R.Srinivasan.

3. The 1st respondent filed a petition in I.A.No.2 of 2021 for inclusion of provision of law relating to adultery in main original petition. In I.A.No.3 of 2021, the 1st respondent herein petitioner wants to implead the 2nd respondent herein, said R.Srinivasan as a party respondent mainly on the allegation that he had seen the petitioner herein in the company of 2nd respondent in the matrimonial home.

4. The Court below allowed both the applications and aggrieved by the



same, the petitioner is before this Court.

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5. The learned counsel for the petitioner assails the order passed by the Court below mainly on the ground that the 1st respondent herein filed main original petition for divorce on the ground of cruelty and it is not open to him to include fresh ground viz, adultery by way of amendment. The learned counsel further stated that the impleadment of the 2nd respondent herein on the allegation that he was the paramour of the petitioner herein would amount to pre-determination of the issue and it will cause prejudice to the petitioner in trial. Therefore, the impleadment order passed by the Court below is liable to be set aside.

6. The reading of the averments contained in the main original petition would make it clear that the 1st respondent herein even at the time of filing the original petition made necessary averments regarding the ground of adultery, though he failed to mention the relevant provision of law in the petition. Therefore, in I.A.No.2 of 2021, he sought for amendment of the original petition for limited purpose of incorporation of necessary provisions of law,



which is only clarificatory in nature. Therefore, I do not find any error in the order passed by the Court below in allowing the petition for amendment.

7. As far as the contention raised by the learned counsel for the petitioner that impleading the 2nd respondent herein treating him as a paramour of the petitioner would cause serious prejudice to the petitioner at the time of trial, I do not think the said submission can be accepted. The impleading application is allowed only based on the averments made by the 1st respondent herein. The averment made by the 1st respondent has to be proved by him by leading necessary evidence. Therefore, merely because the 2nd respondent herein is added as a party respondent in the main original petition, it cannot be presumed that the Court below has come to the conclusion that he is a paramour of the petitioner/wife. The impeachment of the 2nd respondent on the basis of the averments made by the 1st respondent herein in his original petition will not cause any prejudice to the petitioner. The said issue has to be decided at the time of final disposal of the original petition based on the evidence to be let in by the parties.

8. With these observations, both the Civil Revision Petitions are



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dismissed. No costs. Consequently, the connected civil miscellaneous petitions

are closed.

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Index : Yes / No

Speaking Order : Yes / No

dm

To

The Family Court Judge,
Salem.



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S.SOUNTHAR, J.

dm

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