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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2022

CORAM :

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P.(PD) NOS.2419 AND 2420 OF 2017

AND

C.M.P.NO.11429 OF 2017

P.Suresh

... Petitioner/Petitioner
(in both CRPs)

Vs.

T.Jothilakshmi

An insane,

Rep. by her Guardian and Mother Kala

... Respondent/Respondent
(in both CRPs)

Prayer: Revision Petitions filed under Article 227 of Constitution of India to set aside the order dated 06.06.2017 in I.A.Nos.102 & 103 of 2017 in FCHMOP.No.43 of 2017 on the file of the Family Court, Dharmapuri.

For Petitioner
(in both CRPs)

: Mr.T.Karunakaran

For Respondent
(in both CRPs)

: No appearance

COMMON ORDER

These Civil Revision Petitions have been pending for the past four years and it is the grievance expressed by the learned counsel for the petitioner that though notice had been directed to the respondent and notice had also been served, still there is no appearance on behalf of the respondent.

2. The revision petitioner is the petitioner in FCHMOP No.43 of 2017 which had been filed before the Family Court Dharmapuri. He had categorized his wife / respondent in the short cause



title as an insane represented by guardian and mother Kala. The petition has been filed seeking a decree that the marriage solemnized between the petitioner and respondent on 02.03.2015 at Nattamangalam Sri Senraaya Perumal Kovil as null and void.

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3. It is claimed in the petition that the petitioner noticed an abnormal behavioural attitude of the respondent in her daily family life and that she was also taking some treatment for the same. Aggrieved by that particular fact, and holding that he was not informed about the same prior to the marriage, he had filed FCHMOP No.43 of 2017, which I am informed is still pending before the Family Court, Dharmapuri.

4. Simultaneously, the petitioner herein had also filed I.A.Nos.102 and 103 of 2017 before the very same Court. The two interlocutory applications have been filed seeking to appoint the mother of the respondent as guardian to attend the Court proceedings and calling upon the respondent to subject herself for medical examination.

5. Both these applications came to be dismissed by the learned Judge, Family Court, Dharmapuri, by order dated 06.06.2017. wherein, quite apart from dismissing the two interlocutory applications, the learned Judge had also thought it fit to award exemplary costs of Rs.5,000/- in both application to be paid by the petitioner to the respondent herein.

6. Questioning those particular orders, the present revision petition has been filed.

7. A perusal of the records show that the petitioner herein had also filed other interlocutory applications, directing the respondent to be again examined by a medical expert.

8. In the orders, which are now questioned in the present Civil Revision Petitions, the learned Judge had very clearly stated that the Court can come to a prima facie conclusion about the soundness or unsoundness of the mind of the respondent herein, only when there is sufficient material before the Court. The only document which had been relied on by the petitioner was a medical prescription issued by the Life Care Clinic, which was marked as Ex.P1. It had been contended by the petitioner that the respondent was suffering from mental disorder of such kind and magnitude that the respondent was unable to understand the nature of her acts. The learned Judge had very clearly stated that except the said medical prescription, all other prescriptions are ante i.e. prior to the date of marriage. It was stated that the petitioner herein had also produced Ex.P2, a



compact disc said to contain a recorded conversation between the parties. The learned Judge had also stated that the said compact disc was not accompanied by necessary certificate under Section 65B of the Indian Evidence Act, 1872 and therefore, refused to take note of the same.

9. The only other aspect was that the petitioner has stated that the respondent behaved strangely or oddly and alleged erratic, irregular and abnormal behaviour.

10. I do not think that it would be proper to keep the present civil revision petitions on the board of this Court, primarily because the soundness or unsoundness mind of a particular individual is a matter of evidence. There is a procedure which had been laid down in the Code in Order 32 and Rule 15 contemplates that the Court should also enquire the individual concerned. The petitioner will have to go through that particular process.

11. Filing interlocutory applications and calling upon the Court to give a finding on the mental soundness of the respondent herein cannot be countenanced. The petitioner will have to go through trial and the petitioner will have to lead evidence and his evidence will have to be tested during the course of trial to examine whether he was bonafide in his assertion that the respondent is suffering from unsoundness of mind. The prescriptions produced will also have to be tested during the course of trial. The Doctor who issued the prescriptions may also be subjected to cross-examination. Only when the petitioner crosses all these stages and the respondent also has to be examined during the course of trial. If she is able to understand the Court proceedings, the matter ends there. If she is not able to understand the Court proceedings, then the Court itself is under an obligation to appoint a guardian. But, concrete, reliable and relevant evidence is required by the Court before it can declare a particular person before the court as unsound mind. At this stage, filing of interlocutory applications is not an answer.

12. With the above observations, the Civil Revision Petitions are dismissed without giving any finding as to the soundness or otherwise of the mental capacity of the respondent herein. The limited relief granted is to set aside the costs imposed.

13. The petitioner is called upon to go through the trial process. The learned Family Court Judge, Dharmapuri has to pass necessary order in manner known to law during the course of trial in FCHMOP No.43 of 2017 which is still pending. The



petitioner is directed to go back to the Trial Court and advance all contentions, which he now raises before this Court, during the course of trial and not by way of filing interlocutory applications.

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14.Reserving that right to the petitioner, the Civil Revision Petitions are dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

smv

To

The Judge,
The Family Court, Dharmapuri.

+1cc to M/s.T.Karunakaran, Advocate, S.R.No.7754

C.R.P. (PD) Nos.2419 and 2420 of 2017
and C.M.P.No.11429 of 2017

CNR(CO)
RLP(09/03/2022)