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C.R.P. No. 363 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2023

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THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 363 of 2023

Mr.S.Farooq Jeelani,
rep. by his Power of Attorney
Mr.Sanaullah S.

... Petitioner

Vs

Mrs. Ashad Rahim Sanaullah

... Respondent

PRAYER : Civil Revision Petition filed under Art. 227 of Constitution of India, praying to set aside the return order dated 27.01.2023 made in O.S.SR. No. 10244 of 2022 on the file of the Principal District Munsif at Alandur, set aside the same and to number the plaint by allowing the Civil Revision Petition.

For Petitioner : Mr.S.Ruban Prabhu



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ORDER

Challenging the impugned order of return of plaint dated 27.01.2023 passed by the learned Principal District Munsif, Alandur in unnumbered suit in O.S.SR. No. 10244 of 2022, the Revision Petitioner preferred this Civil Revision Petition.

2. The Revision Petitioner herein is the plaintiff, who filed a suit seeking to pass a decree and judgment to declare the talaq pronounced by the plaintiff for 3 times on 28.04.2022, 09.05.2022 and 01.07.2022 respectively passed as per Mohammedan law and Shariath and valid as per law and dissolve the marriage held between the plaintiff and the defendant on 05.02.2004 as per Muslim rites and customs at Adambakkam, Chennai. When the suit was proceeded before the trial court, before numbering the suit, the trial judge returned the plaint stating that whether the trial court is having territorial jurisdiction to entertain the suit. The said return was complied by the plaintiff through his counsel stating that the trial court alone is having jurisdiction for the reasons stated as follows :-



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“It is submitted that for a Muslim husband, there is no substantive law for getting a declaration as sought for in the plaint. His only remedy is to file a declaration by way of suit. Sine the relief of declaration claimed herein is an intangible right that can be claimed only under Sec.25(3) of TNCF Act. As value of the relief under Sec.25(3) is only a sum of Rs.5000/-, the same will lie before the District Munsif Court i.e. this Hon'ble Court.

It is further submitted that the plaint is not filed under the provisions of Family Courts Act. That apart, though this Hon'ble Court comes under the Administrative control of the learned Principal District Judge at Chengalpattu, there is no family court for Alandur area and the jurisdiction of the Family Court at Chengalpattu is meant only for Chengalpattu Town and Taluk. Moreover, the Alandur area does not come under the jurisdiction of Chennai Family Court. As such, the present case, which is pertaining to Alandur area cannot be filed either before Family Court at Chennai or before the Family Court at Chengalpattu. There is no Family Court for all areas in Tamil Nadu. Hence, there is no other option for the plaintiff herein except to file the present suit before this Hon'ble Court. Hence, this Court is the proper Court for the present suit.”



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But, the trial judge returned the plaint stating that the Family Court alone is having jurisdiction to entertain the said matter and hence, the trial judge directed him to file a suit before the Family Court, which is having jurisdiction. Admittedly, Sec.7 of Family Courts Act, 1984 reads as follows:-

“7. Jurisdiction – (1) Subject to the other provisions of this Act, a Family Court shall ---

.....(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 dissolution of marriage'.....”

As per Sec.7(1)(b) of the Act, if there is a Family Court, suit filed by the



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plaintiff can be entertained, but when there is no Family Court, Munsif Court alone is having jurisdiction to try the said suit. Admittedly, as per the jurisdiction with regard to the issue contained in the plaint, Alandur Court is having jurisdiction, but the Alandur Court comes under the administrative control of Principal District Judge at Chengalpattu, admittedly, there is no Family Court for Alandur area, but the Family Court jurisdiction is not to be extended and as per the jurisdictional area assigned to the Family Court alone, it can be entertained. Thus, the Family Court, Chengalpattu is having jurisdiction only with regard to Chengalpattu Town and Taluk. Furthermore, as per the G.O. passed by the Government specified that the jurisdiction of the said Family Court is extended to the local region of Chengalpattu Taluk including of Chengalpattu Town. It is an admitted fact that Alandur is not coming under the jurisdiction of Chengalpattu Taluk and not under the Chengalpattu Town, neither at Chennai. So, the Family Court, Chennai is also not having jurisdiction to decide the matter relating to Alandur. To that effect, the territorial jurisdiction of Chennai was also produced. On perusal of the same, it reveals that Alandur is not included with the jurisdiction of the Family Court, Chennai. Therefore, the Family Court, Chennai is not



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having jurisdiction as per the statutory jurisdiction under law. So, the return made by the trial court is erroneous one and the same is liable to be set aside. Accordingly, the return order dated 27.01.2023 made in O.S.SR.No.10244 of 2022 is set aside and the trial court is directed to take the plaint on file and number the same if it is otherwise found to be in order. Accordingly, this Civil Revision Petition is allowed. However, registry is directed to return the plaint enclosed along with this petition to the plaintiff.

No costs.

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Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
rpp

To

Principal District Munsif,
Alandur.



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T.V.THAMILSELVI, J.

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