



C.R.P.No.1066 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.04.2023

PRONOUNCED ON : 13 .12.2023

CORAM:

THE HONOURABLE Dr. JUSTICE D. NAGARJUN

Civil Revision Petition.No.1066 of 2023

I. Ummusalma

... Petitioner

Vs.

S.B.Syed Jaffar

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the docket order of the learned District Munsiff, Maduranthakam dated 23.01.2023 in O.S.No.40 of 2022.

For Petitioner : Mr.H.Rajaram
for M/s.K.M.Mrithun Jayan

ORDER

This Civil Revision Petition is filed questioning the written endorsement of the plaint in O.S.No.40 of 2022 on the file of the learned Distict Munsiff, Maduranthakam.



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2. The petitioner has filed O.S.No.40 of 2022 on the file of the learned District Munsiff, Maduranthakam, seeking for dissolution of her marriage with the respondent under Section 2 (Viii)(a) of the Dissolution of Muslims Marriage Act, 1939 R/W Order VIII, Rule 1 and Section 26 of C.P.C [hereinafter “the Dissolution of Muslims Marriage Act, 1939” is referred as “the act 1939”]. The respondent having received the summons, failed to appear before the Court, thereby he was set exparte. When the matter was posted for exparte evidence, the said O.S.No.40 of 2022 was returned by the Trial Court on the ground that the District Munsiff Court has no jurisdiction to entertain the subject matter of the suit. Aggrieved by the same, the petitioner has filed this Civil Revision Petition.

3. As the respondent remained exparte, in O.S.No.40 of 2022 and since the issue raised by the petitioner in this Civil Revision Petition is between the petitioner and the Court, this Court is of the opinion that notice to the respondent need not be issued, in order to decide this Revision.

4. The return endorsement of the Trial Court runs as under:

“APC filed and correct. Plaintiff present. Heard the counsel for the plaintiff with regard to the



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C.R.P.No.1066 of 2023

*maintainability of this suit in this Court. As per the proposition laid down by the Hon'ble High Court, Madras in the case of **Mohamed Saif Pasha vs. Madiha Arif**, [2021 (4) MLJ 30] the plaint in the above suit is returned to be presented before the proper forum.”*

Questioning the above said return endorsement, this Civil Revision Petition is filed on the ground that the District Munsiff Court alone is having jurisdiction to try the suit filed Muslim women under the act 1939.

5. Learned counsel for the petitioner submitted that there is no provision in Act 1939 mentioning as to in which Court the suit for dissolution of married Muslim women has to be filed. Thereby as per Section 15 of C.P.C., read with Section 50(ii) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, the District Munsiff Court is having jurisdiction to entertain the suit filed under the act 1939.

6. Perused the copy of the plaint, the pleadings show that marriage of the petitioner with the respondent was held on 09.08.2014. As per the plaint the respondent has suppressed the fact that he has already resigned his job and was working as Driver in DON TRADING Company in Kuwait. The



petitioner has joined the respondent in Kuwait, however the marital life of the petitioner with the respondent did not get along well on account of multiple issues, hence, both of them started living separately from February 2020. The petitioner has and the respondent have also signed in Mutual Divorce Agreement dated 07.08.2022. Subsequently decree was also confirmed by the Family Court (of First Instance) at Kuwait, later the petitioner came back to India and filed a suit for dissolution of marriage.

7. The Act 1939 is simple enactment with six Sections of which Section 1 speaks about the short title and extent, Section 2 speaks about the grounds for decree for dissolution of marriage, Section 3 speaks about the Notice to be served on heirs of the husband when the husband's whereabouts are not known, Section 4 speaks about effect of conversion to another faith, Section 5 speaks about the rights of dower not to be affected and Section 6 was repealed by Section 5 of the Act 26 of 1937. On going through these provisions, it is clear that there is no provision in the Act as to in which Court a suit for grant of decree for dissolution of marriage can be filed by a Muslim married woman under the act 1939. Therefore, there is no specific mention about the subject matter of jurisdiction, Section 15 of C.P.C., runs as under:



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“Every suit shall be instituted in the Court of lowest grade competent to try it”

As there is no mention in the Act 26 of 1937 as to in which Court suit for dissolution of marriage has to be filed, as per Section 15 of Cr.P.C., it can be filed before the District Munsiff Court, have territorial jurisdiction.

8. So far as the case on hand is concerned, there is no dispute that the cause of action arose for the plaintiff to file the suit within the territorial jurisdiction of the District Munsiff Court, Maduranthakam. As already observed, the Act of 1939 did not specify as to in which Court, the suit for dissolution of marriage can be filed by the Muslim married women and that there is no other enactment regulating the filing of the suit for dissolution of Muslim marriage. Thereby, the plaintiff has to necessarily file the suit for dissolution of marriage before the District Munsiff Court, Madurantakam.

9. The District Munsiff Court, Madurantakam has returned the plaint to file the suit in a proper Court by quoting a decision of this Court between reported in *Mohamed Saif Pasha vs. Madiha Arif*, reported in 2021 (4) *MLJ* 30., and this Court has carefully gone through the judgment. The facts



of the case in the referred judgment, go to show that a suit was filed by a Muslim person for recognition of mutual consent divorce (Mubaraat) and this Court in the said judgment has directed the petitioner to approach the Family Court as per Section 7(1)(b) of the Family Courts Act. Section 7(1)(b) of the Family Courts Acts reads as under:

“Section 7(1) in The Family Courts Act, 1984

(1) Subject to the other provisions of this Act, a Family Court shall- -(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;

(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 circumstances arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy



C.R.P.No.1066 of 2023

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.”

10. The Family Courts have been established as per the powers conferred under Section 3 of the Family Courts Act 1984. The Government of Tamil Nadu has issued notifications by way of G.O.Ms.No.1136 dated 11.12.2013. Home Courts II Department constituting Family Courts. Notification VI in the said G.O speaks that the Family Court at Chengalpattu is established for the territorial jurisdiction which extends to the local limits of Chengalpattu Taluk. Chengalpattu Taluk is situated in Kanchipuram District and the Family Court Chengalpattu is having jurisdiction only to the extent of Chengalpattu Town and Chengalpattu local limits and the territorial jurisdiction of which is not extending up to Maduranthakam. That means there is not Family Court constituted extending the territorial Jurisdiction of District Munsiff Court Maduranthagam limits.

11. It is not clear as per the facts in the judgment referred above, whether the territorial jurisdiction of the Family Court situated in the Kancheepuram District will have the territorial jurisdiction extending to the



territorial jurisdiction of the District Munsiff Court, Alandur. Therefore, even if the subject matter in respect of filing a suit for dissolution of Muslim women under the Act 1939 has to be filed in Family Court, since there is no Family Court extending the territorial jurisdiction up to District Munsiff Court, Madurantakam. The Family Court in the Kanchipuram District will not have territorial jurisdiction to entertain suit for dissolution of marriage under the Act 1939.

12. The relief sought for by the petitioner is to pass a the decree for dissolution of marriage on the ground of cruelty. The plaintiff has valued the relief at Rs.100/- under Section 50 (ii) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955. The District Munsiff Court has not questioned the valuation of the relief as mentioned by the plaintiff, in the plaint. Therefore considering Section 15 of C.P.C., read with Section 50(ii) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, filing of the suit for dissolution of marriage under the act 1939 at District Munsiff Court, Madurantakam is proper.

13. In view of the above, this Civil Revision Petition is allowed, directing the District Munsiff, Maduranthakam to receive the plaint in



C.R.P.No.1066 of 2023

O.S.No.40 of 2022 and proceed to dispose of the same as expeditiously as possible. No costs. Original copy of the plaint is ordered to be returned to the learned counsel for the petitioner on acknowledgment and substituting the same with the photocopy.

13.12.2023

Index : Yes / No
Neutral Citation: Yes/No
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To

The District Munsiff,
Maduranthakam.



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C.R.P.No.1066 of 2023

Dr.D.NAGARJUN, J.
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C.R.P.No.1066 of 2023

13.12.2023