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C.R.P.No.1218 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2023

CORAM:

The Hon'ble MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.No.1218 of 2021
and C.M.P.No.9400 of 2021

S.Uthra

...Revision Petitioner/Respondent/
Respondent

-Vs-

R.Sathish

...Respondent/Petitioner/
Petitioner

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order of the learned II Additional Family Court Judge, Chennai, dated 12.03.2021 in I.A.No.1 of 2019 in H.M.O.P.No.973 of 2018.

For Petitioner : Mr.N.Ganesh
For Respondent : M/s.H.Adaikala Arockiaraj

ORDER

This Civil Revision Petition is filed to set aside the order of the learned II Additional Family Court Judge, Chennai, dated 12.03.2021 in I.A.No.1 of 2019 in H.M.O.P.No.973 of 2018.



C.R.P.No.1218 of 2021

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2.Learned Counsel for the Revision Petitioner submitted that the Revision Petitioner is the wife, the Respondent is the husband had filed H.M.O.P.No.973 of 2018, seeking dissolution of marriage. The learned II Additional Principal Judge Family Court, Chennai, had granted a decree of dissolution of marriage as per order dated 14.03.2019. It was an *ex parte* decree. The Revision Petitioner herein, who was the Respondent in H.M.O.P.No.973 of 2018, did not file any Petition to set aside the *ex parte* decree. While so, in the month of October after six months, after disposal of H.M.O.P.No.973 of 2018, the Respondent herein had issued an advocate notice to the wife seeking return of gold jewels and spending nearly Rs.8 lakhs for the marriage by notice dated 03.09.2019, which was replied by the Revision Petitioner wife by advocate notice dated 06.09.2019. After receipt of the reply notice by the wife, the husband had issued rejoinder notice dated 30.09.2019. After exchange of notice, the husband had filed Petition in I.A.No.1 of 2019 in H.M.O.P.No.973 of 2018 under Section 27 of the Hindu Marriage Act, 1955, seeking return of gold jewels. After receipt of notice from the Family Court the wife as Respondent in I.A.No.1 of 2019 in H.M.O.P.No.973 of 2018 had filed counter resisting the same. After due enquiry, the learned II Additional Principal Judge Family Court, Chennai, had passed an order directing the Respondent (wife) to return the



gold jewels, which is extracted hereunder:

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“3.Per contra, the Respondent would submit that the Petitioner has not given any jewels or any articles to her at the time of marriage. The contention of the Petitioner is that his parents gave the articles mentioned in the Petition to his wife. It is not specifically denied by the Respondent in her counter. Further, the Respondent would aver that her articles are in the custody of her husband and that he has no interest in claiming the articles. But she has not submitted the details of what all the articles of her are in the custody of the Petitioner. From this, it is clear that the Petitioner is in custody of the golden articles mentioned in the Petition which were given to her by the parents of the Petitioner at the time of marriage. Therefore, the Petitioner is entitled for the relief as prayed for”.

3. Aggrieved by the same, the Revision Petitioner (wife) against whom the decree of dissolution of marriage was granted by the Family Court, Chennai, had filed this Civil Revision Petition under Article 227 of the Constitution of India, stating that the learned II Additional Principal Judge Family Court, Chennai, had passed an order in a Petition which is maintainable only when the main H.M.O.P.No.973 of 2018 is pending. After disposal of the case, the Family Court has no jurisdiction to entertain Petition under Section 27 of the Hindu Marriage Act, 1955. While so, the Petition in I.A.No.1 of 2019 in H.M.O.P.No.973 of 2018 was taken up for enquiry and the order passed by the learned II Additional Principal Judge Family Court, Chennai, against the Respondent (wife) in I.A.No.1 of 2019



C.R.P.No.1218 of 2021

in H.M.O.P.No.973 of 2018 dated 12.03.2021 is not maintainable.

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4.The learned Counsel for the Revision Petitioner invited the attention of this Court to the averments in H.M.O.P.No.973 of 2018 filed by the Petitioner (husband), wherein he had not stated anything about gifting or handing over jewellery either by his wife, by his mother, or by himself through the newly married wife. Therefore, he seeks to set aside the order passed by the learned II Additional Family Court Judge, Chennai, dated 12.03.2021.

5.Learned Counsel for the Respondent (husband) submitted that the Petitioner herein as Respondent in I.A.No.1 of 2019 in H.M.O.P.No.93 of 2018 had not raised such a plea in the counter filed by her. Therefore, she cannot raise such a plea in this Civil Revision Petition. Therefore, she seeks the Petition to be dismissed as not maintainable.

6.Point for consideration:

Whether the order passed by the learned II Additional Family Court Judge, Chennai, in I.A.No.1 of 2019 in H.M.O.P.No.973 of 2018 dated 12.03.2021 is to be set aside is not maintainable?



C.R.P.No.1218 of 2021

7. On consideration of the rival submission and on perusal of the Court records, it is found that I.A.No.1 of 2019 in H.M.O.P.No.973 of 2018 is not maintainable. In the counter filed by the Respondent (wife) before the learned II Additional Principal Judge Family Court, Chennai, in which it is clearly stated that the Petition in I.A.No.1 of 2019 in H.M.O.P.No.973 of 2018 is not maintainable as the H.M.O.P.No.973 of 2018 itself has been disposed off and the Family Court becomes *functus officio*. The learned II Additional Principal Judge Family Court, Chennai, does not have the records as the Court had already disposed of the case by granting the decree of divorce to the Petitioner (husband) in H.M.O.P.No.973 of 2018. Therefore, the husband cannot file a Petition in H.M.O.P.No.973 of 2018, which was already disposed of as per order dated 14.03.2019. Generally, a Petition of this nature under Section 27 of the Hindu Marriage Act, 1955, is filed as I.A in the pending O.P. After disposal of the O.P, Petition under Section 27 of the Hindu Marriage Act, 1955, cannot be filed as an interlocutory application as an afterthought.

8. Only in two circumstances, the Court can permit the parties to the dispute to file a Petition. If the O.P had been dismissed for default, then the husband as Petitioner, can file an I.A to restore the O.P. In this peculiar



C.R.P.No.1218 of 2021

case, the wife was set *ex parte* and an *ex parte* decree of divorce has been

granted to the husband, who is the Petitioner in O.P. Therefore, the wife

could have filed the Petition under Order IX, Rule 13 of CPC, seeking to

set aside the decree. Except in these two circumstances, the Court cannot

entertain any other application in a case already disposed of by the Court.

The H.M.O.P.No.973 of 2018 was filed by the Petitioner (husband),

seeking dissolution of marriage and the Court, by granting the decree of

divorce, had disposed of the main case. Therefore, an I.A.No.1 of 2019 in

H.M.O.P.No.973 of 2018 under Section 27 of the Hindu Marriage Act,

1955, seeking return of gold jewels itself is not maintainable. Further, in

the H.M.O.P.No.973 of 2018 filed by the husband as Petitioner there were

no pleadings stating that during the marriage or immediately after the

marriage that either the Petitioner husband, his mother, or any other

relatives of her husband had gifted gold jewels to the newly married wife. It

only states that the husband as Petitioner had not received dowry during

the marriage. Under those circumstances, without any materials, the

learned Judge had entertained Petition under Section 27 of the Hindu

Marriage Act, 1955, and also disposed of the case, as though O.P. was

pending before the Court ignoring the fact that the Court had become

functus officio. The order passed by the learned II Additional Judge Family



C.R.P.No.1218 of 2021

Court, Chennai, is without any jurisdiction. It is a fit case to exercise discretion by invoking the power of the High Court under Article 227 of the Constitution of India. Therefore, the order passed by the learned II Additional Principal Judge Family Court, Chennai, in I.A.No.1 of 2019 in H.M.O.P.No.973 of 2018 is set aside.

9.In the light of the above discussion, the point for consideration is answered in favour of the Revision Petitioner and against the Respondent. The order passed by the learned II Additional Family Court Judge, Chennai, in I.A.No.1 of 2019 in H.M.O.P.No.973 of 2018 dated 12.03.2021 is set aside as it was passed without jurisdiction.

10.In the result, this **Civil Revision Petition stands allowed**. The order passed by the learned II Additional Family Court Judge, Chennai, in I.A.No.1 of 2019 in H.M.O.P.No.973 of 2018 dated 12.03.2021 is set aside. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

16.06.2023

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Index : Yes/No

Speaking/Non-speaking order



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C.R.P.No.1218 of 2021

SATHI KUMAR SUKUMARA KURUP, J.,

cda

To

The II Additional Judge Family Court, Chennai.

C.R.P.No.1218 of 2021

16.06.2023