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C.R.P.(MD)No.312 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.03.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD)No.312 of 2021

Jeba, W/o.Moses Rajkumar

.. Petitioner

Versus

Moses Rajkumar, S/o.Rasalam

.. Respondent

Prayer:- Petition filed under Section 115 of C.P.C., to call for the records pertaining to the fair and decreetal order, dated 21.08.2018, passed in I.A.No.1 of 2016 in D.O.P.No.121 of 2014, by the learned District Judge, Kanyakumari at Nagercoil and set aside the same.

For Petitioner : Mr.K.P.Narayanakumar

For Respondent : Mr.K.Kulanthai Vikram

ORDER

This Civil Revision Petition has been filed for setting aside the fair and decreetal order dated 21.08.2018, passed in I.A.No.1 of 2016 in D.O.P.No.121 of 2014, by the learned District Judge, Kanyakumari at Nagercoil.

2. By the impugned order, the Court below has dismissed the application filed by the petitioner for condoning the delay of 410 days in filing application for setting



aside the fair and decreetal *ex parte* order dated 16.07.2014, made in D.O.P.No.121 of 2014, on the file of the District Court, Kanyakumari District at Nagercoil.

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3. The specific case of the petitioner is that in D.O.P.No.121 of 2014, on the file of the District Court, Kanyakumari District at Nagercoil, a pre-suit notice was issued on behalf of the respondent. In the said legal notice, the particulars of the petitioner have been given as "Arasamoodu, Kulasekaram Post, Kanyakumari District". On the other hand, the respondent filed D.O.P.No.121 of 2014 by giving lastly resided address of the petitioner namely, Kollan Vilai, Poovancode, Verkilambi Post, Mecode Village, Kalkulam Taluk, Kanyakumari District.

4. It is submitted in the D.O.P., the respondent had categorically stated that the petitioner was never obeying his words and on 25.01.2012, the petitioner left for her parents' home along with all her belongings and that all the efforts taken by the respondent and the elders ended in failure.

5. The application in I.A.No.1 of 2016 was opposed by the respondent on the ground that initially, the petitioner had been set *ex parte* on 21.04.2014 and thereafter only on 16.07.2014, the fair and decreetal *ex parte* order came to be passed.



6. It is submitted that in terms of Section 57 of the Indian Divorce Act, 1869, where a decree for dissolution or nullity of marriage has been passed and either the time for appeal has expired without an appeal having been presented to any Court including the Supreme Court or an appeal has been presented, but has been dismissed and the decree or dismissal has become final, it shall be lawful for either party to the marriage to marry again. In this case, the respondent contracted a second marriage on 08.04.2015 and out of the wedlock, a female child was born on 17.06.2016. Therefore, it is submitted that no useful purpose will be served by allowing the Civil Revision Petition, as the respondent has contracted the second marriage.

7. I have heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the fair and decreetal order, dated 21.08.2018, passed by the learned Principal District Judge, Kanyakumari District at Nagercoil, in I.A.No.1 of 2016 in D.O.P.No.121 of 2014.

8. The Court below has failed to note that the respondent herein played fraud on the Court in D.O.P.No.121 of 2014, by giving false address of the petitioner herein as "Kollan Vilai, Poovancode, Verkilambi Post, Mecode Village, Kalkulam Taluk, Kanyakumari District", even though the petitioner was residing with her parents, as per the averments made in Paragraph No.5 of D.O.P.No.121 of 2014. The

Court below ought to have noticed the fraud perpetrated not only on the petitioner,



but also on the Court. D.O.P. proceedings initiated by the respondent appears to be fraudulent, inasmuch as the attempt was made to make it seem as if there was service of summons/notice on the petitioner herein, by giving a false address.

9. The Court below, in its order, has also concluded that on perusing the signatures in the acknowledgment card and the summons, there were variations. However, it was not conclusive. The Court below was merely required to join the missing dots and conclude that a fraud has been played by the respondent. The subsequent marriage and begetting of child will not correct the fraud that has been played on the petitioner. Therefore, this Civil Revision Petition is allowed. The fair and decreetal order, dated 21.08.2018, passed in I.A.No.1 of 2016 in D.O.P.No.121 of 2014, is set aside. No costs.

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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07.03.2023

To

The District Judge,
Kanyakumari District at Nagercoil.



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C.SARAVANAN, J.

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Order made in
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