



C.R.P.(MD)No.3118 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.12.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.3118 of 2023
and
C.M.P.(MD)No.16066 of 2023

V.P.Nanthakumar

... Petitioner/
Petitioner/
Petitioner

Vs.

M.Sheela

... Respondent/
Respondent/
Respondent

Prayer : This Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records pertaining to the return of unnumbered I.A.No. of 2023 in H.M.O.P.No.440 of 2022 on the file of Family Court, Dindigul, Dindigul District dated 18.10.2023 and to set aside the same by allowing this Civil Revision Petition and direct Family Court, Dindigul, Dindigul District to number the petition.

For Petitioner : Mr.S.Sarvagan Prabhu



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ORDER

The Civil Revision Petition is directed against the order of return made by the Family Court, Dindigul, dated 18.10.2023.

2. The revision petitioner has filed a petition in H.M.O.P.No.440 of 2022 seeking divorce against the respondent on the ground of cruelty. Pending HMOP, the revision petitioner has filed the above application under Section 45 of Indian Evidence Act to order for DNA test to show the paternity of the child born to the respondent. The learned Judge of Family Court has returned the application by raising a query that when the main case was filed on the ground of cruelty, how the present application is maintainable. The revision petitioner, without re-presenting the above application, has approached this Court challenging the impugned return.

3. The learned counsel appearing for the revision petitioner would submit that in the impugned application in paragraph No.8, it has been alleged that the revision petitioner, after coming to know about the birth of a child to the respondent in 2011, he visited along with his mother and relatives to the respondent's parents house and at that time, the respondent



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has informed all of them that the child was not born to the revision petitioner and the child was born to one Ganesan and threatened them to move out of that place and that therefore, the revision petitioner was constrained to file the above application seeking DNA test.

4. As already pointed out, the revision petitioner has claimed divorce only on the ground of cruelty and it is not the case that he also claimed divorce on the ground of adultery or any other reason.

5. The main contention of the revision petitioner is that the trial Court ought to have taken the application on file and then decide the matter. It is not mandatory for taking each and every application filed by the parties and then to decide about the same. When an application is filed abusing the process of law, there is no legal mandate to number that application and to hear both parties and to pass order.

6. In the present case also, the application seeking for a DNA test in the given circumstances of the case would only amount to abuse of process of law and the impugned order of return cannot be found fault



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with. Hence, this Court concludes that the revision is devoid of merit and the same is liable to be dismissed.

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7. In the result, this Civil Revision Petition is dismissed.

Consequently, connected Miscellaneous Petition is closed. No costs.

04.12.2023

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

Note : Registry is directed to return the original papers to the revision petitioner, after getting necessary acknowledgment.

To

1. The Family Court,
Dindigul.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

csn

Order made in
C.R.P.(MD)No.3118 of 2023
and
C.M.P.(MD)No.16066 of 2023

Dated : 04.12.2023