



C.R.P.No.182 of 2016

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No.182 of 2016

S.Ramesh Babu

..Petitioner

Vs.

M.Sasikala

.. Respondent

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure praying to set aside the order dated 27.11.2015 made in FC.HMOP.No.Nil of 2015 on the file of the Family Court, Dharmapuri by allowing this Civil Revision Petition.

For Petitioner : Mr.C.Munuswamy

For Respondent : Mr.V.R.Annagandhi



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ORDER

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Aggrieved by the rejection of his application seeking divorce on the ground of adultery, the petitioner is before this Court by way of revision.

2. The petitioner had earlier filed HMOP.No.11 of 2010 seeking divorce on the grounds of cruelty and desertion under Section 13(1)(ia) and (ib). The said petition which was transferred to the Family Court, Dharmapuri and re-numbered as FC.MOP.No.19 of 2014 came to be dismissed for non-prosecution on 24.09.2014.

3. Thereafter, the petitioner filed the instant proceeding contending that the respondent is living in adultery. However this petition was also filed under Section 13(1)(ia) and (ib) which are evidently wrong provisions of law. The learned Family Judge, Dharmapuri rejected the petition without numbering on the ground that the petitioner is attempting to re-agitate the same case as in HMOP.No.19 of 2014.

4. The learned Family Judge has gone by the provisions of law that are quoted in the petition and it is evident that he has not looked into the



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contents of the petition. In the petition filed in the year 2015 there is a specific averment that the respondent wife is living in adultery, therefore it is completely a different cause of action. Hence, the petition cannot be said to be barred.

5. Mr.V.R.Annagandhi, learned counsel appearing for the respondent wife would submit that the petitioner is only interested in dragging on the proceedings neither he nor his counsel appear before the trial Court. In fact, there is an order for payment of maintenance which is not being obeyed.

6. I do not think those questions can be looked into or addressed in this revision, which is against the order rejecting a petition without numbering as not maintainable. The learned Family Judge has evidently erred in concluding that the second petition is same as the first one. Once it is found that the second petition alleges a new ground for divorce and is based on a new cause of action, it cannot be said that the dismissal of the earlier petition would bar the second petition.

7. Hence, the order of the learned Family Judge is set aside. The learned Family Judge is directed to number the original petition and



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proceed to dispose it of in accordance with law. It will be open to the respondent/ wife to raise all defenses that are open to her, including the one that the husband should not be allowed to prosecute the OP without payment of maintenance that is directed to be paid. No costs.

12.01.2024

dsa

Index : No

Internet : Yes

Neutral Citation : No

Speaking order



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To
The Family Judge,
Dharmapuri.



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R.SUBRAMANIAN,J.

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