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C.R.P.No.926 of 2016

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 23.01.2024**

**CORAM:**

**THE HONOURABLE MR.JUSTICE S.SOUNTHAR**

**CRP.No.926 of 2016and**  
**C.M.P.No.5149 of 2016**

C.Raja

... Petitioner

Vs.

M.Sridevi @ Kalpana

...Respondent

**PRAYER:** Civil Revision Petition filed under Article 227 of Constitution of India, to strike off the plaint in O.S.No.296 of 2015 pending on the file of the III Additional Family Court, Chennai.

For Petitioner : M/s.S.Makesh

For Respondent : M/s.V.Nithyanandam

**ORDER**

The Civil Revision Petition is filed seeking to strike off the plaint in O.S.No.296 of 2015 pending on the file of III Additional Family Court, Chennai.



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2. The petitioner herein is the husband of the respondent. The respondent/wife filed a suit for injunction against the petitioner seeking permanent injunction restraining the petitioner/defendant from alienating the suit property to third parties.

3. The respondent in her plaint had stated that the marriage between her and petitioner was solemnized on 01.06.2014 and they started living at T.Nagar, Chennai from the date of marriage and the petitioner sent her out of matrimonial home on 12.10.2015 and thereby, deserted her. It was also claimed by the respondent that petitioner made an attempt to encumber the suit property to third parties and hence, she was constrained to file a suit with the above said prayer.

4. The learned counsel for the petitioner by relying on the judgment of this Court in the case of **B.Gajendran Vs Adhilakshmi** in **C.R.P.No.142 of 2013** submitted that mere suit for bare injunction restraining the petitioner from alienating his own properties is not maintainable before Family Court



when there was no cause of action to file a suit under any one of the grounds mentioned under Section 7 of Family Court Act. The learned counsel also brought to the notice of this Court the judgment of the Division Bench of this Court in the case of **C.Raja Vs M.Sridevi @ Kalpana** reported in **CDJ 2023 MHC 4001** wherein, the Division Bench upheld the view of Single Judge in Gajendran case referred above.

5. The learned counsel for the respondent submitted that after deserting the respondent without reasonable cause, the petitioner made an attempt to encumber his property in order to defeat the petitioner's right of maintenance and therefore, the respondent was constrained to file the present suit.

6. In C.Raja case cited above, the Division Bench of this Court observed as follows:-

*“(8) The question therefore before us is whether the view expressed by the Hon'ble Mr. Justice S.NAGAMUTHU in the case of B.Gajendran Vs. Adhilakshmi in CRP.[PD].No.142/2013 dated 03.04.2013 has to be reconsidered for the reason given*



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*by Hon'ble Mr. Justice P.R.SHIVAKUMAR, in his dissenting note in this revision petition. Having regard to the specific reference, we reframe the question to be answered by us as follows: "Whether the Family Court has inherent jurisdiction under Section 7 of the Family Courts Act to entertain a suit by wife against husband for perpetual injunction restraining the husband from alienating residential property of husband while wife and husband were living together for some time and a revision petition maintainable under Article 227 of the Constitution of India to strike of the plaint on the ground that the Family Court has no jurisdiction to entertain a suit?"*

*“(23) The present suit is not a proceeding falls under Section 26 of D.V.Act. The suit is not for maintenance. The prayer for injunction is not consequential to any declaration or a prayer for maintenance. The wife admits that the property was purchased by the petitioner and she does not claim any proprietary right. The petitioner herein admits that the respondent is not in possession or residing in the suit property at present. Admittedly, the respondent wife has filed a petition alleging domestic violence and no other relief under Sections 18 to 21 is sought for. The*



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*judgment of Delhi High Court deals with a situation where the parents-in-law of wife filed the suit for injunction restraining the daughter-in-law from entering/interfering with their possession and Court has only considered the scope of expression "arising out of". All the other judgments referred to and relied upon by Mr.Bharath Kumar, cannot be taken as precedents for the proposition that the Family Court has inherent jurisdiction to entertain a suit where the wife seeks perpetual injunction against her husband restraining him from alienating or disposing off the shared household as contemplated under Section 19 of DV Act, 2005, which can be passed in an application under Section 12[1] of DV Act, 2005, by a Magistrate on being satisfied that domestic violence has taken place. The protection order cannot be passed by a Family Court where proceedings are pending before Metropolitan Magistrate alleging domestic violence. No issue or dispute between husband and wife is mentioned in the plaint with respect to the suit property."*

7. In the cause of action paragraph, the respondent averred as follows:-



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*“11. The plaintiff submits that the cause of action arose at Chennai when the plaintiff and the defendant started living at No.Q-27, Prem Nagar Colony, Q-Block, South Boag Road, T.Nagar, Chennai-600 017 after their marriage was solemnized on 01.06.2014 at Sri Mannatheeswarar Sri Pachai Amman Temple Thirumullaivoyal, Chennai on 22.07.2015 when the defendant sent the plaintiff to her mother's house and thereby deserted her continuously and on 12.10.2015 when the defendant made attempts to sett/settle the property in favour of third parties”.*

8. A perusal of cause of action paragraph in the plaint filed by the respondent would suggest that no relief was sought for by the respondent seeking maintenance and the prayer for injunction is not consequential to the main prayer for maintenance. In such circumstances, the law laid down by this Court in the case of ***B.Gajendran Vs Adhilakshmi*** in ***C.R.P.No.142 of 2013*** and ***C.Raja Vs M.Sridevi @ Kalpana*** reported in ***CDJ 2023 MHC 4001*** are squarely applicable to the facts of the present case. Hence, the Civil Revision Petition is allowed by striking off the plaint in the suit filed by the respondent in O.S.No.296 of 2015 as there is a jurisdictional error in entertaining the suit.



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9. It is made clear that allowing of the Civil Revision Petition will not come in the way of respondent from seeking enforcement of her maintenance rights in the manner known to law. It is always open to the respondent to explore all other remedies available under law.

10. With these observations, this Civil Revision Petition stands allowed. Consequently, connected miscellaneous petition is closed. No costs.

**23.01.2024**

Index : Yes  
Internet : Yes  
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To

The learned III Additional Family Court, Chennai.



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**S.SOUNTHAR , J.**

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