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C.R.P. No. 3746 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2024

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THE HONOURABLE MR. JUSTICE P.DHANABAL

C.R.P. No. 3746 of 2022
and
C.M.P. No. 19788 of 2022

P.Bharath Kumar

... Petitioner / Respondent / Petitioner

Vs.

G.Kavitha

... Respondent / Petitioner / Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, 1950, to set aside the order and decree dated 21.04.2021 made in I.A. No. 1 of 2021 in H.M.O.P. No. 78 of 2020 by the Additional Subordinate Court, Tindivanam.

For Petitioner : M/s. B.Rathika

For Respondent : Mr. R.Sanjay

ORDER

This Civil Revision Petition has been preferred as against the order dated 21.04.2021 passed in I.A. No. 1 of 2021 in H.M.O.P. No. 78 of 2020 on the file of the Additional Subordinate Court, Tindivanam, wherein,



the respondent herein has filed petition to return the articles presented at the time of marriage and the same was allowed.

2. The case of the petitioner is that the respondent is the wife of the petitioner and their marriage took place on 02.05.2013 and thereafter due to misunderstanding between the parties, the petitioner has filed petition for divorce in H.M.O.P. No. 78 of 2020. During the pendency of the above said main petition, the respondent herein has filed the petition to return the petition mentioned articles alleging that those articles were given at the time of marriage by the respondent side and now the said articles are under the custody of the petitioner. In fact, the respondent has not produced the aforesaid jewels at the time of marriage and the above said articles are not under the custody of the petitioner. While so, without any evidence, the Trial Court has passed order to return the above said articles which was not under the custody of the petitioner. Therefore, the order passed by the Trial Court is liable to be set aside.

3. The learned counsel appearing for the petitioner would contend that the respondent herein has filed petition before the Trial Court to return the articles alleging that those articles presented at the time of marriage and the



same were under the custody of the petitioner. In fact, the above said articles have not been given to the petitioner and those articles are not under his custody. The respondent has not adduced any evidence to prove the same. But the Trial Court, without any proof, ordered to return the above said articles. Therefore, the order passed by the Trial Court is liable to be set aside.

4. The learned counsel appearing for the respondent would contend that at the time of marriage, the parents of the respondent presented the jewels and Sethana Articles to the petitioner and the same were under the custody of the petitioner. Thereby, the Trial Court after considering the affidavit of the respondent correctly directed the petitioner to return the said articles. Therefore, the order passed by the Trial Court is proper and the present Civil Revision Petition is liable to be dismissed.

5. This Court heard both sides and perused the materials available on record.

6. In this case, there is no dispute in respect of the relationship between the parties and the petitioner herein has filed main H.M.O.P. for divorce. In the said main petition, the respondent herein has filed an application to return the Sethana Articles and jewels presented by her at the time of their marriage.



According to the respondent, the petition mentioned articles are under the custody of the petitioner but the petitioner denied the availability of the listed Sethana Articles and denied the custody. Therefore, it is the duty of the respondent to prove the same in accordance with law. But there is no evidence adduced by her to prove the same and not even filed any receipts for the purchase of the articles. Since there is a dispute in respect of the properties, it can be decided after full trial by adducing evidences. But, the Trial Court failed to consider the same and the Trial Court not even mentioned about the case of the respondent and only based on the affidavit of the petitioner. The Trial Court has decided the matter without any proof.

7. The learned counsel appearing for the petitioner also would contend that after passed by this order, the main petition was withdrawn by the petitioner herein and now the E.P. No. 84 of 2022 is pending before the Trial Court. Therefore, it is for the respondent to approach the appropriate forum for proper remedy in respect of the Sethana Articles and jewels in accordance with law not through this petition without any evidence and proof. In view of the said reasons, the order passed by the Trial Court is unsustainable and the same is liable to be set aside. Accordingly, the order passed in I.A. No. 1 of 2021 in H.M.O.P. No. 78 of 2020 is set aside.



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8. In the result, the Civil Revision Petition is allowed with the above said observations. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No
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To

The Additional Subordinate Court, Tindivanam.



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P.DHANABAL, J.,

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