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CMA(MD)NO.1134 OF 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.11.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MR.JUSTICE P. VADAMALAI

CMA(MD)No.1134 of 2024 AND
C.M.P.(MD)Nos.11887 & 13020 of 2024

Dr. K. Sundar

... Appellant/Respondent/Petitioner

Vs.

Dr. Indhu Meena

... Respondent/Petitioner/Respondent

Prayer: Civil Miscellaneous appeal is filed under section 19 of Family Courts Act, to set aside the Order dated 19.06.2024 passed by the Family Court, Madurai in I.A.No. 2 of 2023 in H.M.O.P No.216 of 2021 pending on the file of the Family Court, Madurai.

For Appellant : Mr. H. Lakshmi Shankar for Mr.T.Sakthi Kumaran

For Respondent: Mr. P. Shanmugam

* * *

ORDER

Heard both sides.



2. Dr.K.Sundar got married to Dr.Indhu Meena, respondent herein on 13.11.1997 at Madurai as per Hindu rites and customs. Two children(daughter and son) were born through the wedlock. Difference of opinion arose between the parties. Dr.K.Sundar filed H.M.O.P No.216 of 2021 on the file of the Family Court, Madurai seeking divorce under section 13(1)(i-a) of Hindu Marriage Act 1955. In the said H.M.O.P, Indhu Meena filed counter stating that there is no cause of action for maintaining H.M.O.P. 6 months later in December 2022, she filed I.A. No.2 of 2023 under Order 39 Rule 1 seeking temporary injunction to restrain K.Sundar from entering the petition-mentioned premises(Door No.31-A, Pandian Street, (Karunai Multi Speciality Hospital), Bibikulam, Madurai-625 002. The Court below vide order dated 19.06.2024 allowed the I.A. Challenging the same, this civil miscellaneous appeal came to be filed.

3. On 02.09.2024, this Court stayed the said order. To vacate the same, Indhu Meena filed C.M.P.(MD)No.13020 of 2024.

4. The learned counsel for the appellant reiterated all the contentions set out in the memorandum of grounds of Civil



Miscellaneous appeal and called upon this Court to set aside the impugned order.

5. Per contra, the learned counsel for the respondent submitted that the impugned order is well reasoned and it does not warrant interference.

6. We carefully considered the rival contentions and went through the materials on record.

7. We wanted to know in whose name, the petition mentioned premises stand. The petition mentioned premises is a three storied building. A multi speciality hospital in the name of Karunai Hospital is being run in the ground floor. The first floor and second floor are being used as residential premises. It is beyond dispute that the land on which the building has been constructed belongs to K. Sundar.

8. The learned counsel for Indhu Meena would claim that the construction was funded by a joint loan. This is hotly controverted by the learned counsel for the appellant. It is however not in dispute that the



property stands only in the name of K.Sundar. The house tax assessment is in his name. The revenue records also reflect his name. When the property stands in the name of the husband, it is most inequitable to direct him to stay away therefrom. Right to property is a constitutional right. One cannot be turned away from one's own house at the instance of one's spouse. The wife can demand residential order. She can insist she will stay in the matrimonial home. She cannot seek to throw out the husband from his own house. This aspect of the matter was not taken note of by the Court below. The impugned order is set aside. This civil miscellaneous appeal is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

(G.R.SWAMINATHAN, J.) & (P. VADAMALAI, J.)
28th November 2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
PMU

To:

The Judge, Family Court, Madurai.



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AND

P. VADAMALAI, J.

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