



C.R.P.(MD)No.2140 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 02.09.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.2140 of 2021
and
C.M.P.(MD)No.11334 of 2021

K.Alagammal

... Petitioner / 1st Defendant

Vs.

1.Vijayalakshmi

... Respondent / Plaintiff

2.P.Karupiah

... Respondent / 2nd Defendant

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records relating to the proceeding in O.S.No.6 of 2021 on the file of the Family Judge, Dindigul filed by the first respondent against the petitioner and the 2nd respondent and to struck off the same.

For Petitioner : Mr.Babu Rajendran

For Respondents : Mr.Anantha Padmanaban
Senior Counsel
for M/s.APN Law Associates for R1



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ORDER

Heard the learned counsel appearing for the revision petitioner and the learned senior counsel appearing for the first respondent.

2. Thiru.P.Karuppiyah/R2 herein and K.Alagammal (revision petitioner) got married on 09.06.1978 as per Hindu rites and customs. Three children were born through the wedlock. Karuppiyah filed H.M.O.P.No.10 of 1998 on the file of the Principal Sub Court, Dindigul seeking dissolution of the marriage on the ground of adultery, cruelty and desertion. Alagammal remained exparte and H.M.O.P.No.10 of 1998 came to be allowed on 02.07.2002. The said H.M.O.P eventually came to be dismissed for default on 08.09.2005. Karuppiyah was not successful in getting H.M.O.P restored. He filed H.M.O.P.No.175 of 2016 on the file of the Family Court, Dindigul for dissolution of his marriage on the ground of desertion and cruelty. It was dismissed on 21.06.2023. In the meanwhile, one Vijaya Lakshmi filed O.S.No.6 of 2021 on the file of the Family Court, Dindigul seeking declaration that she is the legally wedded wife of Karuppiyah. The petitioner herein was shown as first defendant. This civil revision petition has been filed for striking off the said suit from the file of the court below.



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3. The learned counsel appearing for the revision petitioner reiterated all the contentions set out in the memorandum of grounds of revision and called upon this Court to grant relief as prayed for.

4. The learned senior counsel appearing for the plaintiff submitted that when the petitioner is having statutory remedy under Order 7 Rule 11 of C.P.C, this civil revision petition may not be maintainable. He relied on the decision of the Hon'ble Supreme Court reported in **(2019) 9 SCC 538 (Virudhunagar Hindu Nadargal dharma Paribalana Sabai v. Tuticorin Educational Society,)** According to the plaintiff, the marriage between the plaintiff and Karuppiah took place on 28.10.2002 when the exparte decree dated 02.07.2002 in H.M.O.P.No.10 of 1998 was holding good. He called upon this Court to dismiss the civil revision petition.

5. I carefully considered the rival contentions and went through the materials on record.

6. It is true that the Hon'ble Supreme Court in the aforesaid decision had held that availability of the remedy under Order 7 Rule 11 of C.P.C would



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operate as a complete bar against entertaining of the revision under Article 227 of the Constitution of India. But then, this decision would govern only those cases which fall within the scope of Order 7 Rule 11 of C.P.C. It is well settled that the circumstances set out under Order 7 Rule 11 of C.P.C are not exhaustive. The High Court can strike off a suit on the ground of re-litigation or abuse of legal process. In such cases, one cannot invoke remedy under Order 7 Rule 11 of C.P.C. It is true that Karuppiyah had obtained an exparte decree dissolving the marriage with Alagammal on 02.07.2002. It was set aside only on 17.09.2004. According to Vijaya Lakshmi as well as Karuppiyah, the marriage between them was solemnized on 28.10.2002. The Hon'ble High Court in a recent decision reported in **2023 (3) CCC 74 (Seema Devi vs. Shree Ranjit Kumar Bhagat)** had held that if a party to the matrimonial proceedings had entered into a second marriage, when the exparte decree was holding good, any petition filed by the other party for setting aside the suit will have to be dismissed as infructuous. Unfortunately, for Vijaya Lakshmi (plaintiff herein), Karuppiyah did not putforth this plea in the set aside petition filed by Alagammal.

7. The learned senior counsel appearing for Vijaya Lakshmi would insinuate that Karuppiyah and her counsel had stabbed in the back. In fact, it is



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seen that the counsel who appeared for Karuppiyah had subsequently appeared for Alagammal herself. Since the said counsel is not before me, it may not be appropriate for me to pass any remark on his conduct. Be that as it may, the fact remains that both the HMOPs filed by Karuppiyah ended in dismissal. The resultant effect is that the marriage between Alagammal and Karuppiyah is still legally subsisting. Therefore, the claim by Vijaya Lakshmi that she is the legally wedded wife of Karuppiyah cannot be entertained as that would run counter to Section 5 of Hindu Marriage Act, 1955.

8. In this view of the matter, O.S.No.6 of 2021 on the file of the Family Court, Dindigul is struck off. The learned senior counsel appearing for Vijaya Lakshmi would point out that when Alagammal herself had alleged marriage between Vijaya Lakshmi and Karuppiyah in the criminal prosecution launched by her in C.C.No.130 of 2017 on the file of the Judicial Magistrate No.2, Dindigul, she cannot be allowed to take a contra plea in this petition. Faced with this logical consequence, the learned counsel appearing for the revision petitioner submitted that Alagammal would withdraw C.C.No.130 of 2017 on the file of the Judicial Magistrate No.2, Dindigul. The revision petitioner is therefore directed to file a memo before the Judicial Magistrate No.2, Dindigul for withdrawing C.C.No.130 of 2017. If such a memo is not filed, the learned



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Judicial Magistrate No.2, Dindigul shall dismiss the complaint.

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9. In view of the undertaking now given before this court, the civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

02.09.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To:

1. The Family Judge, Dindigul.
2. Judicial Magistrate No.2, Dindigul.



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G.R.SWAMINATHAN, J.

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