



C.R.P.(MD)No.2933 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 04.12.2023

PRONOUNCED ON: 01.03.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.2933 of 2023

and

C.M.P.(MD)No.15191 of 2023

V.Muniasamy

: Petitioner/Petitioner/Petitioner/
Respondent/Defendant

Vs.

Karuppayee Devi

: Respondent/Respondent/Respondent/
Petitioner/Plaintiff

PRAYER:- Civil Revision Petition is filed under Section 115 of the Civil Procedure Code against the order made in E.A.No.2 of 2022 in E.A.No.1 of 2021 in E.P.No.14 of 2021 in O.S.No.394 of 2004, on the file of the Principal District Munsif, Aruppukottai, dated 22.08.2023.



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For Petitioner : Mr.M.M.Iqbal

For Respondent :Mr.I.Suthakaran

ORDER

The Civil Revision Petition is directed against the order passed in E.A.No.2 of 2022 in E.A.No.1 of 2021 in E.P.No.14 of 2021 in O.S.No. 394 of 2004, on the file of the Principal District Munsif, Aruppukottai, dated 22.08.2023, dismissing the petition filed under Section 151 C.P.C., seeking orders for initiating legal action under Section 340 Cr.P.C., and Section 209 I.P.C., for filing false claim and pursuing frivolous litigation with the void decree passed in O.S.No.394 of 2004.

2. It is not in dispute that the marriage between the petitioner and the respondent was solemnised on 14.12.1977 as per the Hindu rites and customs. The revision petitioner/husband has filed a divorce petition in H.M.O.P.No.13 of 2002, before the Subordinate Court, Aruppukkottai and the said petition was dismissed on 13.02.2004. Aggrieved by the order of dismissal, the husband has preferred an appeal in C.M.A.No.10



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of 2004 before the Principal District Court, Srivilliputtur and the appeal was allowed. Meanwhile, the respondent/wife has filed a suit in O.S.No. 394 of 2004 claiming permanent alimony before the District Munsif Court, Aruppukottai and the suit was decreed on 02.12.2010. The revision petitioner/husband has preferred an appeal in A.S.No.6 of 2011 and the same was dismissed on 12.09.2011. Challenging the dismissal of the appeal, the husband has preferred a Second Appeal in S.A.(MD)No. 193 of 2012 before this Court.

3. The main contention of the revision petitioner/husband is that his appeal in C.M.A.No.10 of 2004 was allowed and while granting divorce in his favour, the appellate Court has adjudged the respondent/wife as an unsound mind person, that the suit in O.S.No.394 of 2004 was prosecuted without appointing any guardian for the plaintiff therein and therefore, the decree granted in O.S.No.394 of 2004 is a void decree, that the respondent/wife has filed second execution petition in E.P.No.41 of 2009, that during the pendency of the Second Appeal, the respondent/wife has not pressed the suit before the executing Court and on that basis, the suit was dismissed as not pressed, that since the suit itself was dismissed as not pressed, the Second Appeal pending in S.A.



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(MD)No.193 of 2012 has been closed by this Court and that thereafter, the respondent/wife has filed another execution petition in E.P.No.14 of 2021 for executing a void and invalid decree by abusing the process of law and that is why he was forced to file the above application to initiate action against the respondent/wife under Section 340 Cr.P.C., and Section 209 I.P.C.

4. The defence of the respondent/wife is that since the Second Appeal was pending before the High Court, she has not pressed the E.P., and filed a memo to that effect, that the executing Court by recording her memo, dismissed the execution petition in E.P.No.41 of 2019 as not pressed on 19.03.2020, that the respondent had never not pressed the suit in O.S.No.394 of 2004, that after the disposal of the Second Appeal, the respondent has filed the execution petition in E.P.No.14 of 2021 and that therefore, the above petition is liable to be dismissed. The revision petitioner has also filed an application in E.A.No.20 of 2020 seeking orders to dismiss E.P.No.41 of 2019 as it was filed in contravention of law and the Civil Rules of Practice.

5. At the outset, it is not the case of the revision petitioner that he



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has taken a plea that the respondent was a person of unsound mind and that she cannot prosecute the suit by herself in the absence of any guardian before the trial Court as well as before the Appellate Court. Even assuming for arguments sake that he had taken such a plea, since the suit was decreed and the appeal was dismissed, it can easily be inferred that the said objection raised by the revision petitioner has been rejected by both the Courts.

6. As rightly pointed out by the respondent in her counter statement, the petitioner has preferred an appeal in C.M.A.No.10 of 2004, challenging the dismissal of the divorce petition in H.M.O.P.No.13 of 2002 and in that appeal, he has not taken any steps for appointment of guardian for the respondent/wife. Moreover he has only filed an appeal in A.S.No.6 of 2011 challenging the judgment and decree passed in O.S.No.394 of 2004 and it is not his case that he has filed an application for appointment of guardian to the respondent/wife. Hence, the present contention that the decree passed in O.S.No.394 of 2004 itself is null and void, is absolutely devoid of substance and is liable for instant rejection.

7. Now turning to the main issue, according to the revision



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petitioner, since the suit was dismissed as not pressed, he was constrained to report the same before the second appellate Court and on that basis, the Second Appeal was ordered to be closed. The main contention of the revision petitioner is that the respondent/wife has filed a memo not pressing the suit and only on that basis, the suit was dismissed as not pressed.

8. Considering the submissions made by the learned Counsel on either side, this Court directed the Registry to call for the entire proceedings in E.A.No.2 of 2022 from the file of the Principal District Munsif Court, Aruppukottai and also directed the Registry to produce the records containing the alleged endorsement made by the learned Counsel on record in the Second Appeal before this Court.

9. It is evident from the original records that the respondent has filed a memo stating that since the Second Appeal is pending before the High Court in S.A.(MD)No.193 of 2012 and that she can proceed subject to the result of the Second Appeal, she is not pressing the execution petition and the executing Court, while recording the same, has passed the following order:



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“Memo perused. Copy not served to the respondent. The respondent party in person not present today, even in earlier occasion. Memo filed by the petitioner to not press this E.P., in view of pendency of S.A. Hence, in view of pendency of S.A., and also on considering that E.A.1/2020 filed by the respondent is for dismissal of this E.P., the non-service of memo for not pressing the E.P., is not fatal. Hence, memo is recorded. E.P., is dismissed as not pressed.”

10. It is evident from the records that, the respondent has not filed any memo nor made endorsement in the execution petition that they are not pressing the suit. The learned District Munsif, after perusal of the records, has specifically observed in the impugned order that the said Court by order dated 19.03.2020 dismissed the E.P., only, but while furnishing the copy of the order dated 19.03.2020, it was mentioned as “suit is dismissed as not pressed”, instead of “E.P., is dismissed as not pressed”. Considering the above, it is very much clear that the respondent has not pressed the E.P., only and on that basis E.P., was dismissed as not pressed.



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11. As rightly contended by the learned Counsel for the respondent as well as as rightly observed by the trial Court, the revision petitioner, taking advantage of the wrong order shown in the certified copy, he has submitted before the second appellate Court that the suit itself was dismissed as not pressed and in view of the representation made by the learned Counsel for the revision petitioner, this Court by recording that since the original suit itself is not being pressed, nothing survives for further consideration in the Second Appeal, closed the Second Appeal on 17.042021.

12. It is pertinent to note that the original suit cannot be not pressed in the execution proceedings and more particularly when the Second Appeal is pending before this Court. The learned District Munsif, by observing that the main suit cannot be not pressed or withdrawn in the execution proceedings and only in the appeal proceedings, the main suit can be not pressed or withdrawn, has rightly dismissed the petition as not maintainable. The remedy open to the revision petitioner is to take steps to reopen the Second Appeal which



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was ordered to be closed and he cannot question or challenge the execution petition filed and now pending in E.A.No.14 of 2021 on the ground that the suit was dismissed as not pressed.

13. On considering the entire facts and circumstances, this Court is constrained to say that not the respondent, but the revision petitioner has been abusing the process of Court. Hence, this Court concludes that the Civil Revision Petition is devoid of merits and the same is liable to be dismissed.

14. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is also dismissed.

01.03.2024

NCC : Yes:No
Index : Yes : No
Internet : Yes : No
SSL

To

1. The Principal District Munsif Court, Aruppukottai.



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2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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