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C.R.P.No.2875 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.04.2025

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.No.2875 of 2023
and CMP.No.17807 of 2023

Mallikaraj

... Petitioner

Vs.

Bhuvaneswari

... Respondent

Prayer: Civil Revision Petition filed under Section 227 of Constitution of India praying to set aside the order passed on 11.04.2023 by the learned Additional Principal Family Court at Coimbatore in I.A.No.7 of 2023 in HMOP.No.1186 of 2018, and allow the revision petition.

For Petitioner : Mr.S.Janarthanan

For Respondent : Mr.Shangar Murali

ORDER

The husband who is the respondent in H.M.O.P.No.1186 of 2018, has preferred the above civil revision petition challenging the order passed in I.A.No.7 of 2023 in H.M.O.P.No.1186 of 2018 by the learned Additional



C.R.P.No.2875 of 2023

WEB COPY

Principal Family Judge, Coimbatore, in and by which, the learned Judge has dismissed the application filed by the revision petitioner herein for issuing witness summons to two persons named in the application.

2. To appreciate the grounds of the revision petition, it would be necessary to briefly state the facts of the case :

- a) The respondent-wife has filed H.M.O.P.No.1186 of 2018 on the file of the aforesaid Court for seeking divorce on the grounds of cruelty. She has described the physical and mental abuse which she has undergone at her matrimonial home at the hands of the respondent and his family members, and the ridicule that she had faced, as she was not able to conceive.
- b) The revision petitioner-husband has come out with a defence that the respondent-wife had contracted a second marriage at a temple in Vendasandur, Pollachi, on 13.06.2019, during the pendency of the HMOP for divorce.
- c) The revision petitioner has therefore filed an application seeking issuance of witness summons to two persons who are the witnesses to the marriage held between the respondent and the third party,



WEB COPY

C.R.P.No.2875 of 2022



and whose presence at the wedding is confirmed by the photograph taken on the event.

- d) The respondent-wife had filed a counter *inter alia* denying the claim of second marriage and also contending that the photograph which forms the basis for filing this application is a morphed photograph. She would further submit that in order to mark the morphed photograph, the summoning of the two witnesses, who are the close relatives of the respondent-wife, by the petitioner-husband, is unacceptable. Further, she had lodged a criminal complaint before the Judicial Magistrate Court No.II, Pollachi, against the petitioner for his false allegation that the respondent had contracted a second marriage, and the same is pending in C.C.No.151 of 2020.
- e) The learned Additional Principal Family Judge, after hearing the parties, proceeded to dismiss the said application on the ground that the two witnesses who are sought to be examined and who are the relatives of respondent-wife, are arrayed as accused in the said C.C.No.151 of 2020, and they cannot be compelled to give evidence against themselves.



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Aggrieved by the dismissal of the said I.A. filed by the revision petitioner, the present revision is filed.

3. The revision petitioner-husband has contended that the respondent-wife had contracted the second marriage during the subsistence of the marriage with the petitioner herein. The persons to whom the witness summons has to go are not arraigned as accused in the criminal case, and it is only the respondent and her new husband are arraigned as A1 and A2. Therefore, the witnesses to whom the summons are now sought to be issued are not facing any criminal proceedings. Hence, the dismissal of the said application is totally erroneous.

4. Heard the learned counsel on either side.

5. The respondent-wife has filed HMOP.No.1186 of 2018 for divorce. The revision petitioner-husband has not filed any counter claim for restitution of conjugal rights or for any other reliefs in the said HMOP. The petition before the Family Court is whether the respondent herein is entitled



C.R.P.No.2875 of 2023

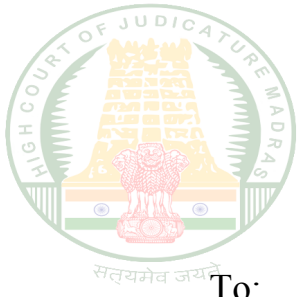
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to divorce on the ground of cruelty. The second marriage is not the defence that was originally taken by the revision petitioner/husband. Therefore, there is no necessity for the revision-petitioner/husband to examine the witnesses in a petition for divorce filed by the respondent-wife, in which the revision petitioner/husband has not sought for any relief nor has filed a counter pleading bigamy by the respondent-wife. Therefore, I see no reason to interfere with the order passed by the learned Additional Principal Family Court at Coimbatore, in I.A.No.7 of 2023 in H.M.O.P.No.1186 of 2018.

6. Accordingly, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

24.04.2025

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes / No
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C.R.P.No.2875 of 2023

To:
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- 1.The Judge
Additional Principal Family Court
Coimbatore.
- 2.The Section Officer
VR Section
High Court, Madras.



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C.R.P.No.2875 of 2023

P.T. ASHA, J.

ds

C.R.P.No.2875 of 2023

24.04.2025