



WEB COPY

C.R.P. (PD) .No.5121 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.5121 of 2024
and C.M.P.No.28736 of 2024

1.XXXXXX

2.YYYYYY

(Minor 2nd petitioner represented by his
mother/natural guardian XXXXX 1st
petitioner herein)

.. Petitioners

Vs.

1.ZZZZZ

2.The Commissioner,
Greater Chennai Corporation,
Chennai.

3.The Zonal Officer,
Zone-10, Division-131,
Greater Chennai Corporation,
Chennai – 600 026.

.. Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to strike of O.S.No.5858 of 2024 on the file of the VII Assistant City Civil Court at Chennai and dismiss the OP as not maintainable.



WEB COPY

C.R.P. (PD) .No.5121 of 2024



For Petitioners : Mr.R.Chandra Sudan

For R1 : Mr.R.Suryaprakash

ORDER

This civil revision petition seeks to strike off O.S.No.5858 of 2024 on the file of the VII Assistant City Civil Court at Chennai. The revision is at the instance of the defendants 1 & 2.

2.For the sake of convenience, the parties will be referred as per their rank in the suit.

3.The first defendant married the plaintiff on 02.06.2014. A female child was born to the couple on 18.03.2015. The second defendant was born on 02.05.2021. The parties separated on 24.05.2022.

4.Alleging cruelty and desertion, the plaintiff presented H.M.O.P.No.148 of 2023 on the file of the Family Court at Perambalur. Pleading that she is unable to travel from Chennai to Perambalur, which affects her work as a Nurse, a transfer petition was moved before this Court by the 1st defendant. The transfer petition was ordered and H.M.O.P.No.148



of 2023 was transferred to the file of the II Additional Family Court at Chennai and re-numbered as O.P.No.5201 of 2023.

WEB COPY

5.This narration is to show that the husband and wife have fallen out and are before the Family Court seeking for divorce.

6.It is the case of the plaintiff that the second defendant was not born from the wedlock between himself and first defendant. He claims to have conducted a private DNA test, which threw up a report that he is excluded as biological father of the second defendant. Being left with no other option, he presented a suit for the following reliefs:

“a.For declaration declaring the second defendant is not the legitimate child of the plaintiff;

b.For a permanent injunction restraining the first defendant from proclaiming to the world that the second defendant (xxxx) is plaintiff's son;

c.For mandatory injunction directing the defendants 3 & 4 to remove the plaintiff's name as father from the second



defendant's birth certificate register No.CCCCCCCCCC dated dd/mm/yyyy”

WEB COPY

7.On being served with the summons, the civil revision petitioners have moved this revision seeking to strike off.

8.I heard Mr.R.Chandra Sudan for the civil revision petitioners and requested him to serve the entire papers on Mr.R.Suryaprakash, who represents the first respondent in the Court below.

9.The point urged by Mr.R.Chandra Sudan to strike off the plaint are two fold:

(i)The suit before the Civil Court is barred by virtue of the Family Court Act, 1984; and

(ii)As the plaint does not disclose non access, as required under Section 112 of the Indian Evidence Act, the plaintiff cannot proceed further with the suit.

10.Per contra, Mr.R.Suryaprakash points out that originally he had presented the suit before the Family Court at Chennai. Since, the Family



Court at Chennai refused to number the suit, he was constrained to approach the Civil Court for declaration. With respect to second plea, he argues that it is a matter for argument, after the evidences are recorded in the suit, and it is not a ground for striking off the plaint.

11.I have carefully considered the submissions of both sides.

12.Here, a very unique situation where I have to agree with the counsel for the petitioner as well as for the respondents on law. On the first point, I am entirely with Mr.R.Chandra Sudan. In terms of Section 7(1)(e) of the Family Courts Act, 1984, any suit or injunction or a declaration as to the legitimacy of any person can be presented only before the Family Court in any area which is covered by its jurisdiction. Birth certificate, having been registered in Chennai, part cause of action arises here and therefore, the Family Court in Chennai has the jurisdiction to entertain the plaint. The relief set forth above speak about the legitimacy of the second defendant. Therefore, the Civil Court will not have the jurisdiction to try this issue.

13.On the second point that is urged by Mr.R.Chandra Sudan, I am



afraid I cannot strike off a plaint for lack of pleadings. Necessary pleadings can always be brought in by way of an application under Order VI Rule 17 of the Code. On this point, I agree with Mr.R.Suryaprakash.

14.Since, H.M.O.P.No.5201 of 2023 is already pending before the II Additional Family Court, Chennai, I am inclined to transfer the suit in O.S.No.5858 of 2024 from the VII Assistant City Civil Court at Chennai to the file of the II Additional Family Court at Chennai. I am adopting this measure, because even if I were to strike off the plaint, plaintiff can always file a fresh suit before the Family Court. I do not want the parties to undergo the processual wrangles all over again. Both the counsel are agreeable to this course of action.

15.The point of lack of plea of non access and application under Section 112 of the Indian Evidence Act can be raised by Mr.R.Chandra Sudan's client before the Family Court, on such transfer.

16.In the light of the above discussion, O.S.No.5858 of 2024 is withdrawn from the file of the VII Assistant City Civil Court, Chennai, and



transferred to the file of the II Additional Family Court at Chennai. On such transfer, the suit shall be re-numbered and disposed of along with O.P.No.5201 of 2023.

17.In the result, this Civil Revision Petition is ordered accordingly.

Consequently, the connected Miscellaneous Petition is closed. No costs.

09.01.2025

krk

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

1.The VII Assistant Judge,
City Civil Court,
Chennai.

2.The II Additional Judge,
Family Court,
Chennai.



WEB COPY



C.R.P. (PD) .No.5121 of 2024

V.LAKSHMINARAYANAN, J.

krk

C.R.P.(PD).No.5121 of 2024

09.01.2025