

Chitra Vs. Dhanasekaran

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Court : Chennai

Decided On : Jun-25-2013

Judge : K.Ravichandrabaabu

Appellant : Chitra

Respondent : Dhanasekaran

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED: 25.06.2013
CORAM THE HONOURABLE Mr.JUSTICE K.RAVICHANDRABAABU
C.R.P.(NPD) No.295 of 2011 and M.P.No.1 of 2011 Chitra .Petitioner
..vs.Dhanasekaran .Respondent Prayer: Civil Revision Petition filed under Article
227 of the Constitution of India against the fair and decreetal order dated
21.10.2010 in I.A.No.2 of 2007 in C.M.A.No.2 of 2008 on the file of the Additional
District Court, (Fast Track Court).Dharmapuri.

For Petitioner : Mr.V.R.Annagandhi For Respondent : Mr.R.Subramaniam

ORDER

This civil revision petition is filed against the order made in I.A.No.2 of 2007 in C.M.A.No.2 of 2008 on the file of the Additional District Court, (Fast Track Court).Dharmapuri, whereby the application filed by the respondent herein seeking for marking additional documents was allowed.

2.The petitioner before this Court is the wife and respondent is the husband.

The respondent in this civil revision petition as the husband filed H.M.O.P.No.75 of 2003 against the petitioner seeking for divorce.

On 25.11.2004, the said petition was dismissed on merits.

Aggrieved against the same, the respondent herein filed C.M.A.No.42 of 2005 which was subsequently transferred and renumbered as C.M.A.No.2 of 2008, now pending on the file of the District Court, Dharmapuri.

Pending the said appeal, the respondent herein filed two interim applications in I.A.No.2 of 2007 and I.A.No.3 of 2007, for seeking permission to mark additional documents and for a direction to the wife/petitioner herein to submit herself for medical examination, respectively.

I.A.No.3 of 2007 came to be dismissed on 26.02.2008 and against which a civil revision petition was filed by the respondent herein in C.R.P.No.2662 of 2008 which also came to be dismissed by this court by an order dated 21.07.2009.

Thereafter, in I.A.No.2 of 2007 an order came to be passed on 21.10.2010, allowing the said application and permitting the respondent herein to mark additional documents.

Aggrieved against the said order dated 21.10.2010, the present civil revision petition is filed before this court.

3.Heard the learned counsel appearing for the petitioner as well as the respondent.

4.Learned counsel appearing for the petitioner submits that the order passed by the court below in permitting the respondent to mark additional documents is not as per the requirement contemplated under Order 41 Rule 27 C.P.C.and the court below has not given any reason as to why the said application was allowed.

5.Learned counsel appearing for the respondent submitted that the said application was allowed by the court below based on the order passed by this

Court in C.R.P.No.2662 of 2008 dated 21.07.2009 and therefore, there is no error in the order passed by the court.

6.It is seen that the court below has dismissed I.A.No.3 of 2007 on 26.02.2008 wherein the respondent herein sought for a direction to the petitioner/wife to submit herself for medical examination.

After the dismissal of the said application, a civil revision petition came to be filed before this Court in C.R.P.No.2662 of 2008.

While dismissing the civil revision petition, the learned Judge has however observed that the respondent herein who is the petitioner in the above civil revision petition is always at liberty to adduce additional evidence before the Appellate Court either for oral or documentary evidence.

Based on the said observation, the court below has allowed the application.

7.A perusal of the order passed by the court below indicates that no independent reasons have been assigned for allowing the application filed under Order 41 Rule 27 C.P.C.According to the learned counsel for the petitioner, the respondent is trying to fill up the lacuna.

At any event, this court while disposing of the earlier civil revision petition had only observed that the petitioner is at liberty to file a petition for adducing additional evidence before the Appellate Court.

Such liberty cannot be considered as granting permission to mark the documents.

Certainly, the court has to consider the application to find out as to whether the requirement under Order 41 Rule 27 C.P.C.is satisfied or not and pass a speaking order as to whether the reason stated in the application is justifiable or not.

When there is no specific finding given by the court below in this aspect, I am of the view that the order has to be set aside and the matter has to be remitted back to the court below for considering the said application in I.A.No.2 of 2007 and pass orders on the same afresh after hearing both sides on merits and in accordance with law.

Accordingly, the civil revision petition is allowed and the order made in I.A.No.2 of 2007 is set aside and the matter is remitted back to the court below for disposal of the said I.A.No.2 of 2007 in C.M.A.No.2 of 2008 within a period of 30 days from the date of receipt of a copy of this order.

No costs.

The connected miscellaneous petition is closed.

vri To The Additional District Court, (Fast Track Court).Dharmapuri

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