

Lakshmana Vs. Ramamani

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Court : Karnataka

Decided On : Jul-27-2015

Judge : A.S. Bopanna

Appeal No. : Writ Petition No. 4599 of 2015 (GM-FC)

Appellant : Lakshmana

Respondent : Ramamani

Judgement :

(Prayer: This Writ Petition is filed under Articles 226 and 227 of the Constitution of India praying to quash the Order dated 3.1.2015 passed by the Senior Civil Judge and CJM, Gauribidanur/Chikkaballapur in M.C.No.10/2011 on IA No.XII (Annexure-A) and consequently allow IA No.XII filed by the petitioner under order VI Rule 17 read with Section 151 of CPC (Annexure-F).)

1. The petitioner is before this Court assailing the order dated 3-1-2015 passed on I.A.12 in MC No.10/2011.

2. The petitioner herein is the petitioner in MC No.10/2011. The said Petition was filed under Section 9 of the Hindu Marriage Act seeking restitution of conjugal rights. In the said Petition which was at the stage of evidence an application has been filed seeking to amend the Petition and convert the same into a Petition under Section 13(ib) of the Hindu Marriage Act seeking dissolution of marriage. The respondent herein opposed the said application. The Court below after taking

note of the rival contentions has by the impugned order dated 3-1-2015 dismissed the said application. Claiming to be aggrieved, the petitioner is before this Court.

3. Heard the learned counsel for the parties and perused the Petition papers including the order impugned herein.

4. The learned counsel for the petitioner in support of her contention would rely upon the order dated 9-6-2009 passed in writ petition No.8589/2007 wherein this Court had held that such an application for amendment under Order 6 Rule 17 of CPC would be permissible even if the petition originally is filed under Section 9 of the Act and was being amended to be a Petition under Section 13 of the Act. To the same effect, the learned counsel for the petitioner would rely on the Judgments of the High Court of Allahabad in the case of Smt. SHASHI SHAH vs. KIRAN KUMAR SHAH reported in 1998-4-AWC 211 and the decision of the High Court of Bombay in the case of Smt. UTTARA PRAVEEN THOOL PRAVEEN reported in 2014(1) BOM. CR 495.

5. In the light of the decisions referred to by the learned counsel for the petitioner, if the order impugned herein is perused it is to be noticed that the Court below has not rejected the application as one not being maintainable. The position of law as enunciated in the said decisions is only the reiteration of the established position. However, as to whether the amendment sought is to be permitted or not has to be considered on the facts of each case. If the said aspect of the matter is kept in view, the Court below while rejecting the application in the instant case, has taken note of the contentions that would be urged while converting the petition to one under Section 13 of the Act.

6. The learned counsel for the petitioner by relying on the application which was filed before the court below would point out that the changes which are sought to be made are only minimal to presently maintain the Petition as one under Section 13 of the Act. Even if the said contention is noticed, I am unable to accept the same, for the reason that the aspect relating to the birth of the child and in that light, the allegations which have been made to seek the dissolution of the marriage would not be the same as has been pleaded in the instant case when the Petition was filed under Section 9 of the Act. Therefore, the court below was justified in

taking note of the same and rejecting the application. Hence, the order does not call for interference. The petitioner in any event, would have the liberty of filing a fresh Petition in accordance with law.

In terms of the above, the Petition stands disposed of.

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