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C.R.P.(PD).No.3547 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.3547 of 2024

R.Gnana Sundari

.. Petitioner

Versus

T.Yesuraj

.. Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India to direct the Principal Family Court, Chennai to number the petition in O.P.SR.No.3797 of 2024 on the file of the Principal Family Court, Chennai.

For Petitioner : Mrs.Shaikh Mehrunnisa Kasim

ORDER

This Civil Revision Petition arises out of the refusal of the Principal Family Court at Chennai to number the petition filed under Section 9 of the Hindu Marriage Act, 1955 by the wife.

2. The petitioner and the respondent entered into a matrimony on 23.03.2011. The petitioner would plead that they got married at Bhavani



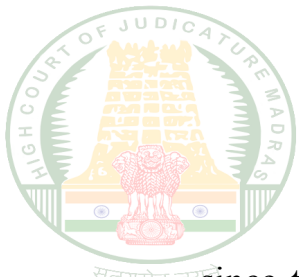
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Amman Koil, Mettupalayam, Tiruvallur district. From the wedlock, two children have been born on 16.11.2011. Both the petitioner as well as the respondent are in the Police service.

3. Alleging that the parties to this revision got married according to Christian rites and customs, the husband has initiated a petition for divorce in I.D.O.P.No.1754 of 2019. This petition is pending before the II Additional Family Court, Chennai. On service of summons in the said proceeding, the civil revision petitioner has taken a stand that they did not get married according to the Christian rights and customs, but, in a simple manner on 24.08.2010. A proof affidavit was filed in support of her case. The civil revision petitioner, as the respondent in I.D.O.P.No.1754 of 2019, would state that the marriage was fixed in the year 2010, but, it was solemnized at the aforesaid temple on 23.03.2011.

4. Pleading that the parties are Hindus, the petitioner has invoked Section 9 of the Hindu Marriage Act, 1955 and presented a petition for restitution of conjugal rights. This petition was presented on 03.07.2024. It was returned by the Registry stating that how the petition is maintainable

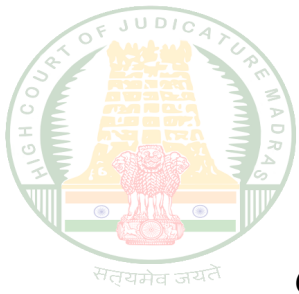


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since the petitioner belongs to "Christian religion". It was represented by the civil revision petitioner stating that both the parties are Hindus as per document Nos.13 and 15. Document No.13 is the Transfer Certificate of the respondent and the document No.15 is the Transfer Certificate of the petitioner. Both the documents have been placed for my perusal.

5. On perusal of the said documents, it is clear that the civil revision petitioner is a "Hindu-Kallar" and the respondent is a "Hindu-Adi Dravidar". Furthermore, the specific plea of the petitioner in paragraph No.4 of the petition in H.M.O.P is that the I.D.O.P.No.1754 of 2019 itself is based on a fake marriage date with a fake marriage invitation. When this specific plea is taken, I am not able to understand how the Registry of the Family Court can yet again return the papers on 20.07.2024 stating that the previous return has not been complied with. Furthermore, a certificate has been sought for to show that the marriage was solemnized at Bhavani Amman temple. The fact that the marriage had taken place on 23.03.2011 is clear from the marriage certificate that has been issued by the Marriage Officer-cum-Sub Registrar at Ponneri.



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6. The issue in I.D.O.P.No.1754 of 2019 is whether the marriage took place on 24.08.2009 and whether it was as per Christian rites and customs. For the purpose of Indian Christian Marriage Act, 1872, it would suffice if one party is Christian. Insofar as the Hindu Marriage Act, 1955 is concerned, both the parties have to be Hindus. This issue necessarily has to be addressed by the Court at the time of disposal of either the I.D.O.P or H.M.O.P. To demand proof at the time of numbering, I feel that it would put the petitioner in a difficult position. This is because there cannot be a trial before the Registry and another trial after the respondent files his counter and issues are framed by the Court.

7. This Court in *Selvaraj Vs. Koodankulam Nuclear Power Plant India Limited rep. through its Project Director, 2021 SCC OnLine Mad 2514*, had directed a Court to go as per the averments made in the petition and not act as if it is a party to the litigation. Nowhere in the petition, the civil revision petitioner has pleaded that she is a Christian. On the contrary, her specific plea is that the proceeding in I.D.O.P.No.1754 of 2019 itself is based on a fabricated document. When such plea exists, the repeated return of the petition by the Court, calling upon the parties to prove that they are



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Hindus, is erroneous. A Court should act upon the averments made in the petition for the purpose of seizing jurisdiction and should not play the role of the respondent. Following the judgment in the *Selvaraj's* case (cited *supra*), there shall be a direction to the Principal Family Court, Chennai to number O.P.SR.No.3797 of 2024 if it is otherwise in order.

8. This Civil Revision Petition is allowed. No costs.

04.09.2024

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no
grs

Note:- Registry is directed to return the original petition in O.P.SR.No.3797 of 2024 to the learned Counsel for the civil revision petitioner after obtaining usual endorsement.

To

The Principal Family Court,
Chennai.



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V.LAKSHMINARAYANAN, J.

grs

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