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C.R.P.(PD).No.4266 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.10.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.4266 of 2024

Joe Austin .. Petitioner

Versus

Victor Jegatha P .. Respondent

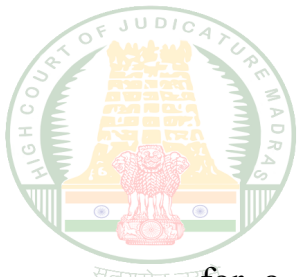
Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India to direct the registry at the Family Court, Chennai to number O.P.(Sr.).No.1863 of 2024.

For Petitioner : Mr.Rahul Jagannathan

ORDER

This Civil Revision Petition challenges the order passed by the Family Court at Chennai in O.P.SR.No.1863 of 2024, dated 30.05.2024.

2. The petitioner and the respondent are the husband and the wife. They married as per Christian rites and customs on 23.06.2003 at Kanyakumari. They plead that they are Roman Catholics and that their marriage was not registered. They also plead that they have been separated



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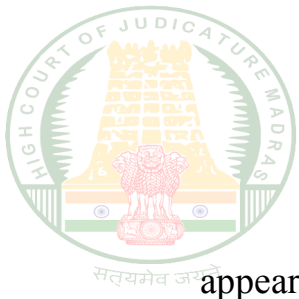
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for a period of five years and more i.e., from 06.02.2019 before they presented the petition on 27.03.2024. On account of incompatibility, they plead that they want to separate as it is the most sensible and practical solution available to them. They also point out that the children born from the wedlock on 05.05.2004 and 31.05.2006, have attained majority.

3. On these pleas, they presented a petition under Section 10-A of the Divorce Act, 1869. The petition was returned on 04.04.2024 calling upon them to produce a Church certificate.

4. Law does not expect a party to do an impossible act. A reading of the paragraph No.3 of the petition filed before the Family Court, Chennai shows that they do not have a Church certificate or a marriage certificate which documents their marriage, dated 23.06.2003.

5. The learned Counsel for the petitioner made an endorsement on 18.04.2024 pointing out that in terms of Section 77 of the Christian Marriage Act, 1872, the marriage will not be declared void by virtue of its non-registration. On this score, the papers were represented and the parties



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appeared before the learned Judge. Yet again the papers have been returned saying that as the certificate was not produced, the Court will not number the said application. Hence this Civil Revision Petition at the instance of the husband.

6. Heard Mr.Rahul Jagannathan, learned Counsel for the civil revision petitioner.

7. A perusal of Section 10-A of the Divorce Act, 1869 shows that a petition for dissolution can be presented by both the parties once they have agreed that they are not in a position to live together and have decided to dissolve the marriage by Court. In terms of Section 10-A(2), the Court, after receipt of the petition, should conduct an enquiry and be satisfied that a marriage had been solemnised. Under Section 10-A, there is no requirement to produce a certificate of registration. However, at the time of enquiry under Section 10-A(2), if the Court is able to come to a conclusion that the marriage had been solemnized and the petitioners lived as man and wife and if it satisfies the other requirements of Section 10-A(1), then, the marriage can be dissolved by the decree of the Court.



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8. As the section does not demand any certificate of marriage and since the Court can, at the time of enquiry, decide the existence of the relationship between the petitioner and the respondent, there shall be a direction to the Family Court, Chennai to number O.P.SR.No.1863 of 2024, if it is otherwise in order.

9. This Civil Revision Petition is ordered. No costs.

23.10.2024

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

To

The Family Court,
Chennai.



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V.LAKSHMINARAYANAN, J.

grs

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