

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No.1332 of 2014
and
M.P.No.1 of 2014

C.Nagarajan .. Petitioner

vs

M.Vennila ... Respondent

Criminal Revision case filed under Sections 397 and 401 of Cr.P.C. against the judgment dated 02.09.2014 passed by the learned Principal District and Sessions Judge, Krishnagiri in C.A.No.57 of 2013 confirming the judgment dated 12.11.2013 passed by the learned Judicial Magistrate No.II, Krishnagiri in D.V.No.1 of 2012.

For Petitioner : Mr.V.Rameshvel

For Respondent : Mr.V.Nicholas

ORDER

The petitioner has come forward with this Criminal Revision case as against the concurrent judgments passed by the Courts below in awarding right to reside in the property owned by the petitioner/husband or in the alternative to pay the rent, which is now in occupation of the respondent/wife.

2. The brief facts of the case is as follows:

The respondent/wife preferred a complaint as against the petitioner/husband under Sections 12, 17, 18, 19, 20, 22, 23 and 26 of the Protection of Women from Domestic Violence Act, 2005 seeking the following reliefs:

(i) the husband should not evict her from the "shared house hold" at No.309, II Phase, New Tamil Nadu Housing Board Colony, Krishnagiri.

(ii) to grant compensation of Rs.5,00,000/-

and (iii) to issue a protection order prohibiting the husband from committing any act of Domestic violence.

The trial court, after hearing both sides, has granted the relief of residential order to the respondent/wife or in the alternative directed the petitioner/husband to pay the rent to the house, which is in occupation of the respondent/wife. However, no compensation as prayed for was awarded. Aggrieved against the same, the petitioner/husband preferred criminal appeal and the Appellate Court confirmed the judgment passed by the trial court. Challenging the same, the present revision has been filed.

3. The main ground of attack by the petitioner/husband is that both the Courts below have failed to take into consideration the fact that the address mentioned in the HMOP No.60 of 2009 preferred by the respondent/wife, the address of the petitioner as well as the respondent were shown as Door No.309. However, according to the petitioner, the complaint in D.V.No.1 of 2012 has been filed only in the year 2012 and at that time, admittedly, she was not residing in the said Door number. When such being the position, the judgment passed by the trial court granting the relief of residential order to the respondent/wife is not in accordance with the provisions contained under Section 19(c) of the Protection of Women from Domestic Violence Act, 2005. The petitioner would further contend that the said fact was also admitted by the respondent herself during cross examination. However, both the Courts below have failed to take into consideration this vital fact and ordered the relief of shared house hold, which the respondent/wife is not entitled to or in the alternative to pay the rent for the house, which is in occupation of the respondent/wife. Accordingly, he prayed for setting aside the judgments of both the Courts below.

4. Learned counsel appearing for the respondent/wife would submit as follows:

(i) Though in the maintenance petition in M.C.No.14 of 2010, the learned Chief Judicial Magistrate, Coimbatore vide order dated 10.12.2011 had directed the petitioner/husband to pay maintenance in a sum of Rs.2,500/- to the respondent/wife and a sum of Rs.5,000/- to her son, till date no amount has been paid by the petitioner/husband.

(ii) In the maintenance petition filed by the respondent, the petitioner filed a petition for divorce, wherein the Court has directed the petitioner vide order dated 06.07.2012 to pay a sum of Rs.1,500/- as litigation expenses and even that amount has not been paid.

(iii) Earlier she was residing only in Door No.309 at Krishnagiri as mentioned in the maintenance petition; however, she was thrown out of that house by the petitioner/husband. Therefore, she was residing in the rented premises. Since the address of the respondent/wife was mentioned as Door No.309, the trial court directed the petitioner/husband to allow her to reside in the said Door number; however in the alternative, the trial Court also passed an order stating that if the petitioner/husband is not willing to permit her to reside in the shared house hold, he was directed to pay the rent, which was confirmed by the first appellate Court.

(iv) As per Section 2(s) of the Act, the 'shared house hold' include the person who live at any stage in a domestic relationship either singly or along with the husband, alternatively under Section 19(f) of the Act, it is stated that the husband should secure the equal level of house for her to reside or otherwise to pay the rent for the same, if the circumstances so require, which was rightly ordered by the trial court and confirmed by the Appellate Court.

Accordingly, he prayed for the dismissal of the Criminal Revision Case.

5. I have heard both sides and with their consent, the main criminal revision case is taken up for final disposal. Perused the records.

6. The only point which has been raised by the petitioner/husband is that the fact that the petitioner had given the address as Door No.309 in the HMOP application cannot be construed as that of the respondent/wife is living in the said Door number as she has been residing in a separate rented house. Hence, it is not a shared house hold and the conclusion arrived at by the Courts below is not tenable in the eye of law. In this connection, it is pertinent to point out the definition under Section 2(s) of the Protection of Women from Domestic Violence Act, 2005, which reads as follows:

"shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such

a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household."

It would also mean that where a person lives or at a stage lived in a domestic relationship either singly or with the respondent. In this case, admittedly, the petitioner/husband himself states in the HMOP petition that the respondent/wife is residing in that address and for service of summons in that case, he has given the address as Door No.309. A clear admission is made by the petitioner himself that she was living in the shared household at least till that point of time in the HMOP. No doubt, it is admitted by both the parties, thereafter, she has been driven out of the house and she is presently living in the rented house.

7. The classification as stated under Section 2(f) of the Act, which reads as follows:

"domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family."

clearly applies to the facts of the very case on hand, wherein the respondent/wife lives in the shared household of the petitioner/husband in the lawful capacity.

8. With this basis, when we analyse the matter further, both the Courts below have concurrently held that the respondent/wife has categorically admitted that earlier she was living in the shared house hold of the petitioner/husband and now as she has been driven out, she is residing in a rented premises and which fact has also not been controverted by the petitioner herein. No where he has stated that she has never ever resided in the premises in Door No.309. This vital fact that has been decided in the concurrent judgments of both the Courts below have to be taken note of. Furthermore, both the Courts below have pointed out clearly that the petitioner/husband himself has admitted that the respondent/wife had resided in that house. Nowhere in the appeal grounds also, the petitioner/husband has stated that the petitioner had never ever lived in the house bearing Door No.309. That being the case, the contention raised now that she is not residing in the same house, at this stage, cannot be accepted. As rightly pointed out by both the Courts below, if the petitioner is not willing to accommodate her in the shared house hold along with him, he is liable to pay the rent as contemplated under the Act. However, both the Courts have negatived the claim made by the respondent/wife for compensation.

9. For all the above stated reasons, I do not find any reason to interfere with the reasoned order passed by both the Courts below.

10. In the result, this Criminal Revision Case is dismissed. Consequently, the connected miscellaneous petition is closed.

vj2

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. The Principal District and Sessions Judge,
Krishnagiri
2. The Judicial Magistrate No.II,
Krishnagiri
3. -do- thro' The Chief Judicial Magistrate
Krishnagiri at Dharmapuri.

+ 1 cc to Mr.V.Nicholas, Advocate SR 21750

+ 1 cc to Mr.V.Ramesh, Advocate SR 21390

tej(co)
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Cr1.RC.No.1332 of 2014

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