

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-07-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 1252 of 2009
and
M.P. No. 1 of 2009

S. Sivashanmugam .. Petitioner/Respondent

Versus

Fathima Merry .. Respondent/Complainant

Criminal Revision Case filed under Sections 397 read with Sec. 401 of Cr.P.C. to set aside the order dated 31.08.2009 passed in M.C. No. 1 of 2008 on the file of Judicial Magistrate, Bhavani, Erode District.

For Petitioner : Mr. C. Prakasam

ORDER

The petitioner is aggrieved by the order dated 31.08.2009 passed in M.C. No. 1 of 2008 by which the learned Judicial Magistrate, Bhavani, Erode District directed the revision petitioner to pay a sum of Rs.3,000/- per month towards maintenance.

2. The learned counsel appearing for the revision petitioner would contend that before the trial court, the petitioner disputed the factum of marriage between the petitioner and the respondent and the birth of the three children out of the alleged wedlock between the petitioner and the respondent. It is further contended that the respondent has filed the maintenance case at the instigation of those who are enemical towards the petitioner. The maintenance case has been filed only to harass the revision petitioner. The petitioner has not produced any documentary evidence to prove the factum of marriage, while so, the question of payment of maintenance does not arise.

3. The Civil Revision Case is pending from the year 2009, however, the respondent has not been served. I heard the counsel for the revision petitioner and perused the judgment of the court below.

4. It is seen from the judgment of the court below that the respondent herein has categorically averred that the marriage was solemnised between her and the revision petitioner herein during the year 1976 at Roman Catholic Church, Musiri, Tiruchirapalli District

and after the marriage, the respondent and the revision petitioner lived as husband and wife at the matrimonial home. According to the respondent, out of the wedlock, one daughter and two sons have born. It is stated by the respondent that the revision petitioner is working as Office Assistant in Government High School, Pullanaickanur. It is the specific averment of the respondent that the revision petitioner did not bother to take care of the respondent and her children and he led a way ward life by spending the amount earned by him in drinking and other illegal activities. According to the respondent, she worked as a servant maid in a bakery and with her self-earned money, she brought up the three children. It is also stated that the daughter Selvarani was given in marriage and the two children are presently doing seasonal odd jobs.

5. As regards the factum of marriage, the respondent examined herself as PW1 and another independent witness as PW2, Nallamuthu. The trial court, on examination of the deposition of PW1 and PW2 concluded that the factum of marriage is proved. The trial Court also lend support to it's conclusion by placing reliance on Ex.P1, legal notice sent by the respondent to the revision petitioner; Ex.P2, postal acknowledgment card; Ex.P3, family ration card; Ex.P4 to P7, voters identity card of the respondent and her three children. The trial Court, by placing heavy reliance on Ex.P1, legal notice, concluded that if the version of the revision petitioner is true that there was no marriage solemnised at all between him and the respondent, he ought to have issued a reply notice denying the averments contained therein at the earliest point of time. Such a conclusion arrived at by the trial Court, in my view, is perfectly valid. When the revision petitioner disputes the factum of marriage, he ought to have given appropriate reply to Ex.P1, legal notice sent on behalf of the respondent claiming maintenance. Therefore, I hold that the respondent has proved the factum of marriage between her and the revision petitioner and confirm the findings of the trial court in this regard.

6. As regards the quantum of maintenance, admittedly, the revision petitioner is working as Office Assistant during the year 2009 in Government High School. Even at the time of institution of the maintenance case, the respondent has averred that the petitioner was in receipt of a sum of Rs.10,000/- per month. The revision petitioner has not denied the factum of his employment as Office Assistant. Taking the above said facts into consideration, the trial Court awarded a meager sum of Rs.3,000/- per month towards maintenance to the respondent, which in my view, is fair and reasonable. I do not find any reason to interfere with the order passed by the trial Court. The Civil Revision Case is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CO)

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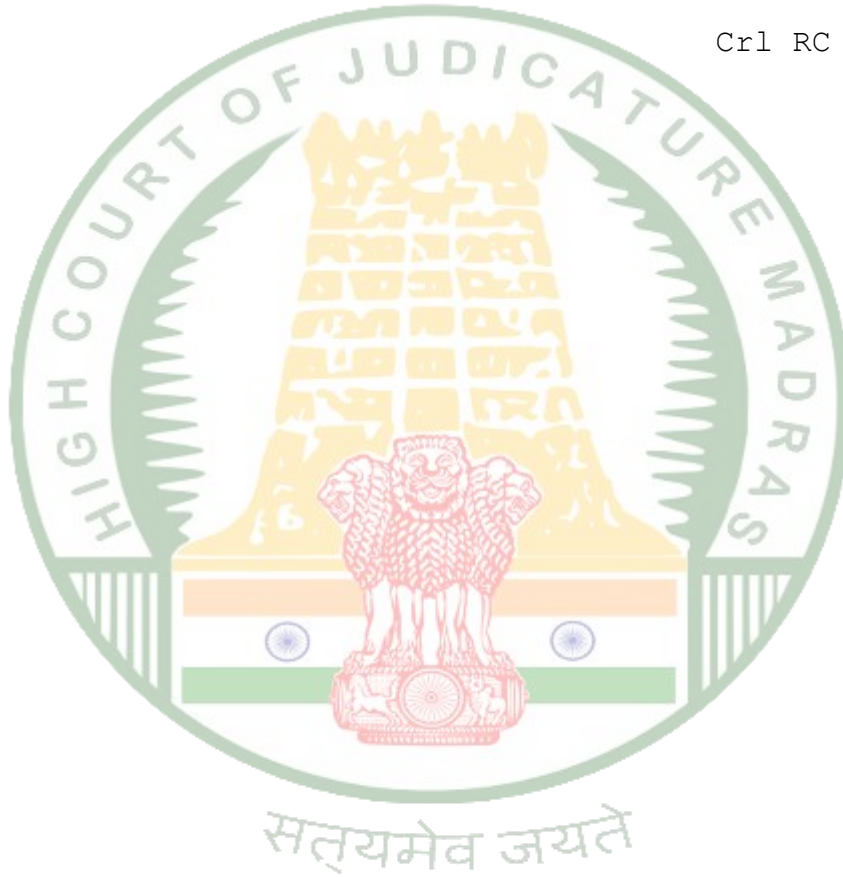
To

1. The Judicial Magistrate
Bhavani, Erode District
2. The Chief Judicial Magistrate,
Erode District.

+1 cc to Mr.C.Prakasam, Advocate, sr.36639

Crl RC No.1252 of 2009

ad(co)
kra(10/08)



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