

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.635 of 2015
and M.P.No.1 of 2015

B.P.Balaji

... Petitioner

Vs.

K.Rajalakshmi @ Rajamani

... Respondent

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and decreetal order dated 07.12.2012 made in I.A.No.362 of 2011 in I.A.No.251 of 2009 in O.S.No.42 of 2006 on the file of the Subordinate Court, Tiruvannamalai.

For Petitioner : Mrs.S.Suseela Devi

ORDER

Challenging the fair and decreetal order passed in I.A.No.362 of 2011 in I.A.No.251 of 2009 in O.S.No.42 of 2006 on the file of the Principal Subordinate Court, Tiruvannamalai, the defendant has filed the above Civil Revision Petition.

2.The plaintiff, who is the wife of the petitioner, has filed the suit in

O.S.No.42 of 2006, claiming a monthly maintenance of Rs.3,000/- and a sum of Rs.1,08,000/- towards past maintenance for three years.

3.After contest, the trial Court decreed the suit by directing the petitioner to pay a sum of Rs.1,500/- per month towards maintenance. Thereafter, the respondent wife filed an application in I.A.No.251 of 2009 under Section 152 of the Civil Procedure Code to amend the decree, since the payment of past maintenance was not incorporated in the decree.

4.On a reading of the judgment passed in O.S.No.42 of 2006, it could be seen that the issue with regard to the payment of past maintenance was decided in favour of the plaintiff stating that the respondent plaintiff is entitled to the past maintenance at the rate of Rs.1,500/- per month for a period of three years. However, while drafting the decree, the payment of past maintenance was not incorporated. Hence, the application filed by the plaintiff in I.A.No.251 of 2009 was allowed by the trial Court on 04.11.2009. Thereafter, the petitioner defendant filed an application in I.A.No.362 of 2011 in I.A.No.251 of 2009 to set aside the order passed in I.A.No.251 of 2009. According to the petitioner, he was not put on notice in I.A.No.251 of 2009 and therefore, the order should be set aside.

5.On a reading of the judgment and decree passed in O.A.No.42 of

2006, it is clear that a mistake had crept in only because of clerical error. When there is a clear finding given by the trial Court in the judgment with regard to the payment of the past maintenance, the same was not incorporated in the decree. In order to rectify the clerical error, the application under Section 152 of the Civil Procedure Code in I.A.No.251 of 2009 was rightly allowed by the trial Court. The petitioner will not be prejudiced in any manner by carrying out the correction in the decree, which is in consonance with the judgment passed in the suit. The trial Court, taking into consideration all these aspects, rightly dismissed the application in I.A.No.362 of 2011.

6.In these circumstances, I do not find any error or irregularity in the order passed by the trial Court. The Civil Revision Petition is devoid of merits and the same is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va

16.12.2015

M.DURAIWAMY,J.
va

To

The Subordinate Court,
Tiruvannamalai.

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