

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No.326 of 2010
and
M.P.No.1 of 2010

K.Thangamani

.. Petitioner

Versus

1. Chandra
2. Minor Sukaniya
3. Minor Arunkumar

... Respondents

Minors 2 & 3 rep.by mother and
natural guardian Chandra/first
respondent.

Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C. against the order dated 17.09.2007 passed by the learned Judge, Family Court, Salem in CMP No.49 of 2006.

For Petitioner : No appearance

For Respondents : Mr.R.Nalliyappan

ORDER

For the past two hearings, there was no representation for the petitioner. Hence, the matter was listed today under the caption 'for dismissal'. Even today, there is no representation for the petitioner. However, the learned counsel for the respondents is present. Hence, as per the judgment of the Hon'ble Apex Court reported in (2013) 3 SCC 721 [K.S.Panduranga vs. State of Karnataka], if the petitioner do not appear, there is no necessity for the Court, which is hearing the matter, to issue warrant for special notice or appoint any Amicus Curiae to argue the matter on behalf of the petitioner. The Court is empowered to deal with the matter on merits and dispose of the same. Accordingly, this matter is taken up for disposal on merits.

2. By the impugned order dated 17.09.2007, the court below directed the petitioner/husband to pay totally a sum of Rs.4,500/- per month at the rate of Rs.1,500/- to each of the respondents, viz., wife and two children as maintenance. Aggrieved against the same, the petitioner has come forward with this Criminal Revision Case.

3. The grounds raised by the petitioner, is that the marriage itself did not took place between the petitioner and the first respondent and the parenthood of the respondents 2 and 3 are denied.

It is his further contention that the witnesses examined on the side of the respondents were all interested witness. Therefore, the Court below should not have believed the same. Further, no material evidence is also produced for the registration of the marriage between the petitioner and the first respondent, even though it was alleged to have been took place in the temple. Finally, the petitioner would contend that even the parents of the petitioner gave evidence against him due to the fact that his sister was given in marriage to the first respondent's brother. Accordingly, he would pray for setting aside the order passed by the court below.

4. Learned counsel appearing for the respondents would mainly contend that originally, the Court below ordered maintenance at the rate of Rs.200/- to the first respondent/wife till her life time and Rs.300/- each to respondents 2 and 3-the children, in M.C.No.34 of 1999. Subsequently, considering the fact that the petitioner is earning more than Rs.30,000/- per month, the respondents once again filed C.M.P.No.49 of 2006 seeking enhancement of the maintenance and also in view of the fact that her children are physically handicapped children, viz., deaf and dumb. He would further submit that in the earlier proceedings itself the marriage has been proved and accordingly, the court below ordered maintenance and on filing the petition, seeking enhancement of maintenance, the same has been ordered by the Court below, warranting no interference in this revision.

5. Learned counsel for the respondents also brought to the notice of this Court that the second respondent/daughter of the petitioner could not be given in marriage due to her disability. Accordingly, he would pray that maintenance may be ordered to her till her life time as the Court below has directed the petitioner to pay maintenance till her marriage.

6. Heard the learned counsel for the respondents and perused the records.

7. On a careful perusal of the entire records, it is very clear that in the previous proceedings itself the entire matter has been settled and maintenance was ordered in M.C.No.34 of 1999 and that order has become final. The present petition has been preferred by the first respondent/wife only seeking enhancement of the maintenance ordered in the earlier proceedings on the ground that the petitioner/husband is earning more than Rs.30,000/- per month and that she could not maintain her children as they are physically handicapped. Accordingly, the Court below, considering the oral and documentary evidence adduced on either side and also taking into account the fact, that the children are deaf and dumb, enhanced maintenance ordered by the Court below at Rs.1,500/- per month to each of the respondents, which is a reasonable one.

8. It is further seen that the Court below has also stated that the maintenance has to be given to the second respondent/daughter till she is given in marriage and to the third respondent/son till he attains majority. It is also seen from the records, that the minor children have now become major and the arrears also will have to be paid by the petitioner only, till they

attain majority. Since it is stated by the learned counsel for the respondents that the second respondent could not be given in marriage, due to her disability, it is the duty of the father to maintain her.

9. For all the above reasons, I do not find any reason to interfere with the order of maintenance passed by the Court below. Accordingly, this Criminal Revision case is dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst.Registrar

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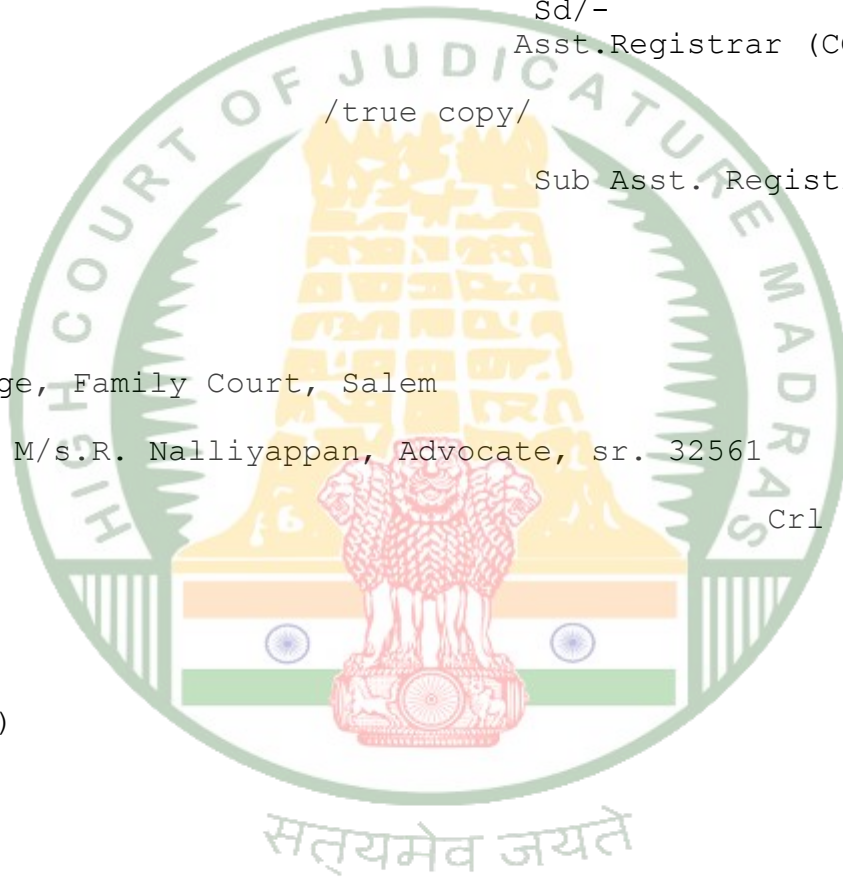
To

The Judge, Family Court, Salem

1 cc to M/s.R. Nalliyappan, Advocate, sr. 32561

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