



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.09.2015

CORAM:

THE HONOURABLE MRS.JUSTICE S.VIMALA

Criminal Revision Case (MD)No.317 of 2015

and

M.P.(MD)No.1 of 2015

Meenakshi

.. Petitioner/Petitioner

Vs.

1.Gopal

2.Selvakumar

.. Respondents/Respondents

Prayer:

Revision is filed under Section 397 r/w 401 Cr.P.C. to call for the records relating to the order passed in M.C.no.27 of 2014 dated 08.05.2015 on the file of the Family Court, Dindigul and set aside the same and allow the revision awarding maintenance to the petitioner payable by the respondents.

For Petitioner : Mr.R.Venkateswaran

For Respondents : Mr.N.Sathish Babu

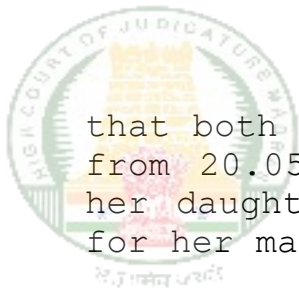
ORDER

The revision petitioner is the wife of the 1st respondent and the mother of the 2nd respondent. Both the husband and the son neglected and refused to maintain the revision petitioner and that made the revision petitioner to file a petition for maintenance in M.C.No.27 of 2014 before the Family Court, Dindigul.

2.The marriage between the petitioner and the first respondent took place about 41 years back and two children were born, out of whom, the second respondent is the son and one more daughter was Kavitha. The said Kavitha was married to one Jeyaraman on 05.07.2000. The marriage of the second respondent was solemnized on 01.02.2003 with one Sangeetha.

3.The first respondent is a retired Police Constable. The second respondent is working as a Professor in Alagappa University. The first respondent is also receiving a sum of Rs.20,000/- as interest from lending money. The first respondent received a sum of Rs.11 lakhs at the time of his retirement and now, he is stated to be getting a sum of Rs.10,000/- towards pension.

4.The second respondent is earning a salary of Rs.1,10,000/-
<https://hgservices.ecmcd.gov.in/hgservices/> working as a Professor. Both of them are owning immovable properties and a decent bank balance, besides they are living in a good status. The allegation against both of them is



that both of them neglected and refused to maintain the petitioner from 20.05.2013 onwards. The petitioner is now taken care of by her daughter and the petitioner claims a sum of Rs.15,000/- p.m. for her maintenance.

5. The claim of the petitioner was disputed by the respondents on the ground that out of the retirement benefit received by the first respondent, a sum of Rs.2,00,000/- has been deposited in the name of the petitioner in a Fixed Deposit Account in Canara Bank, from which she is receiving interest. Apart from that, a house had been purchased in the name of the petitioner. The daughter Kavitha has married the brother of the revision petitioner herein and only at their instigation, the petitioner voluntarily left the matrimonial home along with deposit receipts and other documents and therefore, there is no necessity to maintain the petitioner. The second respondent has also adopted the counter affidavit filed by the first respondent.

6. Before the lower Court, the petitioner has been examined as P.W.1 and daughter has been examined as P.W.2. The first respondent himself was examined as R.W.1 and the second respondent was examined as R.W.2. The Court below has considered the oral and documentary evidence produced before it and has chosen to dismiss the petition on the ground that the respondents did not refuse or neglect to maintain the petitioner and it is only the petitioner, who adamantly refused to stay with them and therefore, the question of payment of maintenance does not arise for consideration. The dismissal order passed by the learned Magistrate is under challenge before this Court.

7. In order to appreciate the contentions raised in this revision petition, it is necessarily to look into the reasons furnished for dismissal of the petition by the lower Court.

8. The respondents seem to have stated before the Court below that if the petitioner is willing to stay with them, they are ready to support and maintain her.

9. The issue to be considered in this revision is whether unjustifiably the wife refused to live with the husband and her son or the circumstances prevailing at home repelled her from the home and stay away. In other words, whether there was conducive atmosphere available at home for this petitioner to stay along with them or the atmosphere was with humidity which caused suffocating circumstances for her?

10. The finding by the trial Court is that the petitioner herself voluntarily left the matrimonial home along with documents and deposit receipts; that the petitioner did not give any police complaint regarding the harassment by her husband at any point of time; there could be no case of harassment. The trial Court seems



to have taken exception to the evidence of the daughter, wherein she would allege illegal intimacy by the petitioner along with somebody else and that those averments did not find place in the petition.

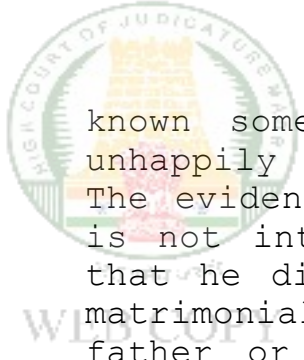
11. Admittedly, a Civil suit is pending between the sister and her brother (second respondent in the civil suit) with regard to partition of the ancestral properties, in which, the father is also a party. Therefore, it is evident that the brother and sister are at logger heads. When the daughters are also entitled to a share in the property, as a member of the co-parcenary, the brother cannot have a grievance that she filed a suit for partition. Because of the property dispute raised by the sister claiming partition, now there is partition between the father and mother, each one supporting their respective side.

12. It is not the case of the daughter that she will not pay maintenance just because the mother is residing with her. It is the grievance of the son that the mother has taken away her deposit receipts and other documents while she moved on to her daughter's house. The insecurity on account of old age coupled with desertion on the part of the husband and son would have made her to take the deposit receipts and documents along with her. It reflects only lack of confidence on the part of her husband and the son. Therefore, the act of the mother in taking away the document cannot be faulted with. More over, it is not customary for the mother to stay in the house of married daughters in many culture, even though there is legal liability on the part of the daughter also to maintain their parents. Anticipating some inconveniences also, the mother could have taken the documents along with her.

13. The learned Judge has made an observation that nowhere it is stated in the evidence of the petitioner that she was driven away from the home. Admittedly, this part of the observation is patently incorrect. It is open to the learned Magistrate to say that he disbelieve the evidence of the petitioner, because what is stated in the evidence, is not supported by pleadings, but that has not been done in this case.

14. The evidence that has already adduced by the petitioner has been over looked and the order reads as if that there is no evidence adduced at all on the part of the mother saying that she has been neglected and be refused to be maintained. There is proof of neglect in the evidence of the son himself.

15. The learned counsel for the respondents submitted that the son is living away from the matrimonial home and there is no occasion for the son to know about the dispute between the father and mother. The distance may not be a matter, if the son is interested in the life of his parents. Atleast he should have



known some details as to whether they are living happily or unhappily and if they are unhappy, what is the reason for that. The evidence of the son would make it crystal clear that the son is not interested in the welfare of the mother. He would state that he did not know on which date, the mother went out of the matrimonial home and that he did not pay any maintenance to the father or mother and that he did not know anything about the dispute between the father and mother. This itself would go to show that the son is not interested in the welfare of the mother. He has denied the suggestion that he is receiving Rs.1,15,000/- p.m., but the salary certificate is not produced before this Court. The inference is that if the salary certificate is produced, it would be against the interest of the son and that is why, it is not produced.

16. The next question whether the evidence of the mother that the father is having illegitimate intimacy with several women has to be believed in the absence of any pleadings to that effect?

17. The learned counsel for the revision petitioner submitted that the petitioner did not state anything in the petition regarding the alleged illegitimate intimacy of her husband, but has chosen to disclose it only before this Court at the time of evidence.

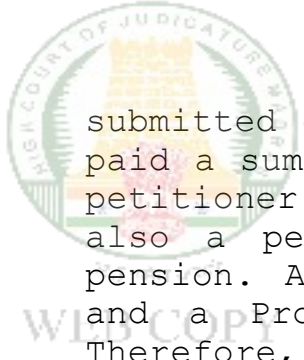
18. It is true that it is not stated in the petition, but the question is how far the evidence could be believed in the absence of pleadings, is the material issue.

19. Under normal circumstances, no amount of evidence can be looked into unless it is supported by pleadings. But in matters relating to family dispute, where the parties on account of social factors or due to lack of awareness or due to lack of communication did not plead, but the evidence indicate that the allegation may be true and after ascertaining the reason for non disclosure in the pleadings, may rely upon the evidence, after giving opportunity to the other side to refute the evidence.

20. After hearing in the chamber and after persuading them to live together, opportunity was given to both of them to stay together for a week and the wife also readily agreed to go and live with the first respondent. But immediately thereafter, an affidavit has been filed before this Court stating that the husband wanted her to come, if at all only along with the deposit receipts and other documents and as otherwise she will not be permitted to enter in to the house. This act of the first respondent would give the inference that the husband is not interested in maintaining his wife and it amounts to refusal and

<https://hccourt.madras.gov.in/madras>

21. In order to assess the quantum of maintenance, it has been



submitted on the part of the first respondent that he has already paid a sum of Rs.2 lakhs, which is on deposit and from which, the petitioner is getting interest. More over, the first respondent is also a pensioner receiving only a sum of Rs.10,000/- p.m. as pension. Apart from that, the second respondent, who is the son and a Professor, is earning more than Rs.1 lakh per month. Therefore, the son should pay more, when the husband is aged and he is earning only pension.

22. Considering the totality of circumstances, the first respondent/husband will pay a sum of Rs.2,000/- p.m. as maintenance and the second respondent/son will pay a sum of Rs.8,000/- p.m. as maintenance. Even though the petitioner has claimed a sum of Rs.15,000/- p.m., the fact remains that the interest from the deposit of Rs.2 lakhs would also accrue to the benefit of the wife to the extent of Rs.2,000/- p.m. and therefore, grant of maintenance at Rs.10,000/- p.m. would be sufficient to take care of the interest of the petitioner. Under such circumstances, the observation of the learned Judge that there are no ground for the petitioner herein to live away from the respondents 1 and 2, has no basis and it is liable to set aside.

23. In the result, the order passed by the learned Judge dismissing the petition is hereby set aside. The first respondent shall pay a sum of Rs.2,000/- p.m. as maintenance and the second respondent shall pay a sum of Rs.8,000/- p.m. as maintenance i.e. payable on or before fifth of the every succeeding months. The amount of maintenance is ordered to be paid from the date of petition.

24. The Criminal Revision Petition is ordered accordingly. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To
The Judge, Family Court, Dindigul.

+ 1 CC TO MR.R.VENKATESWARAN, ADVOCATE IN SR NO. 52393
+ 1 CC TO MR.N.SATHISH BABU, ADVOCATE IN SR NO. 52324

RJ2

TE/JGB/ : 28/10/2015 : 5P/4C

Cr1.R.C.(MD)No.317 of 2015 and
M.P.(MD)No.1 of 2015