

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.10.2016

Coram

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

Crl.R.C.No.898 of 2015

1. C.Kulandaivel

2. K.Ambujam

.. Petitioners/ Respondents

Vs.

M.Ramya

.. Respondent/ Petitioner

Prayer :- Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C. to set aside the order dated 14.07.2015 made in CA.No.135 of 2014 passed by the learned II Additional Sessions Judge, Salem.

For Petitioners : Mr.S.Q.Yusuf  
for M/s.Nathan and Associates

For Respondent : Mr.S.Natarajan.

ORDER

The Criminal revision is directed against the order passed by the learned II Additional Sessions Judge, Salem made in CA.No.135 of 2014 dated 14.07.2015.

2.The brief facts which are relevant to the facts of the case are as follows :-

The present revision respondent has filed complaint under Section 12 of the Domestic Violence Act before the Judicial Magistrate, Mahila Court, Salem, after hearing both parties, the trial Court allowed the application in CMP.No.717 of 2014. Against which, the present revision petitioners/Kulandaivel and Ambujam filed petition in CMP.No.2083 of 2014 under Section 25 of the Domestic Violence Act, to set aside the order dated 03.01.2014 made in CMP.No.717 of 2014. The trial Court after hearing both sides comes to a conclusion that the household property not belongs to the husband of the petitioner and the property situated at 59/53, Thamanna Chetti Street, Gugai, Salem belong to the first petitioner/Kulandaivel, the same does not comes under the purview of shared household property, hence, the respondent is not entitled to claim residential right from the shared house. Aggrieved against the said order, the revision respondent herein preferred criminal appeal in CA.No.135 of 2014 before the

II Additional Sessions Judge, Salem, the lower appellate Court after perusing the records allowed the criminal appeal by setting aside the order of the Judicial Magistrate, Additional Mahila Court, Salem made in CMP.No.2083 of 2014 dated 01.10.2014. As against the order of lower appellate Court, the criminal revision is before this Court by the petitioners.

3.The learned counsel for the petitioners would mainly contended that the properties herein belongs to the revision petitioners and will not come under the category of shared house hold of the respondent and her husband. It is further, contended that the property does not belong to the husband of the revision respondent/Ramya, the husband and wife after their marriage have not lived together in the house situated at 59/53, Thammanna Chetty Street, Gugai, Salem, the respondent has not produced any documents before the trial Court to show that the husband and wife have lived together in the above said property. Hence, the learned Counsel for the petitioners prays to set aside the order of the first appellate Court and to allow the criminal revision.

4.The learned counsel for the respondent mainly contended that the first appellate Court after perusing the entire documentary evidence produced before the Court comes to a conclusion that the present revision respondent and her husband have lived together in the shared household and the respondent herein also produced Bank pass book to that effect. The first appellate Court after appreciating the entire facts and circumstances of the case, correctly comes to the conclusion that the property comes under shared household and allowed the appeal by setting aside the order of the Judicial Magistrate, Additional Mahila Court, Salem made in CMP.No.2083 of 2014, dated 01.10.2014 and there is no illegality or infirmity in the order of the lower appellate Court, prays for dismissal of the revision petition.

5.The learned counsel for the petitioners in support of their contentions submitted a decision of the Hon'ble Apex Court reported in (2007) 3 SCC 169 - S.R.Batra and another V. Smt.Taruna Batra before the lower court.

6.The learned counsel for the respondent in support of his contentions submitted the following authorities before the lower court:-

1)2007 (5) CTC 679 - Vandhana V. T.Srikanth and Krishnamachari and

2)2011 (1) CTC 841 - M.Muruganantham and Susmitha Priya @ Priya v. M.Megala.

The authorities cited on both sides before the Courts below is not relevant at this stage to decide the present case in hand.

7.The first appellate Court mainly relied on the first page of the Bank Passbook produced on the side of the respondent/wife. The first appellate Court mainly relied upon the statement of the passbook, which shows that the respondent lives in the shared household along with her husband. In this case, the first page of the passbook was produced only at the appellate stage, there is no evidence on the side of the petitioners to deny the truthfulness of the passbook etc., The same was denied by the petitioners counsel contending that the first appellate Court erroneously relied upon the first page of the passbook to prove her living in the particular house of the husband.

8.The petition and affidavit filed by the petitioners under Section 25 of the Domestic Violence Act in CMP.No.2083 of 2014 was ordered by the trial Court on 01.10.2014, before the trial Court the respondent/wife has not produced any documents to prove that he resides in the particular shared household. In the earlier petition filed by the respondent/wife under Section 23 of the Domestic Violence Act, the petitioner therein has not produced any documents to show that she resides in the shared household of the husband.

9.The revision petitioners submits that without giving any opportunity to other side, the above said document i.e, passbook was marked and the same is relied on by the first appellate Court. Before marking the document sufficient opportunity has to be given to the present revision petitioners, without giving an opportunity, the first appellate Court relied upon the passbook and erroneously allowed the appeal, which amounts to violation of principles of natural justice. Hence, the order of the trial Court is liable to be set aside.

10.In view of the above circumstances, before relying upon the documents produced on the side of the respondent/wife, a fair chance would have been given to the revision petitioners, without giving opportunity to put forth on the side of the petitioners, the document was relied upon by the first appellate Court and allowed the appeal.

11.Admittedly, the respondent/wife had produced some documents before the lower appellate Court, the Court without providing opportunity to the petitioners to prove the gravity of the document, allowed the criminal appeal. In view of the above factual circumstances, this Court is inclined to set aside the order of both the Courts below and to remit back the matter before the trial Court for fresh disposal.

12.In the result, the criminal revision is allowed, by setting aside the order of both the Courts below and the matter is remanded back to the trial Court for fresh disposal, in accordance with law, after giving an opportunity to the both parties to adduce their oral and documentary evidence and dispose of the case, preferably, within a period of two months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS V )

/true copy/

Sub Asst. Registrar

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To

1. The II Additional Sessions Judge, Salem.

2. The Judicial Magistrate,  
Additional Mahila Court, Salem.

1 ccc to M/s. Nathan and Associates, Advocate, Sr. 57089

1 cc to Mr.S.Natarajanm Advocate, Sr. 56567

Crl.R.C.No.898 of 2015

RJ (CO)  
kk 25/10

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