

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.09.2016

Coram

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

Crl.R.C.No.807 of 2016
and Crl.MP.No.5998 of 2016

K.Sivakumar

.. Petitioner

Vs.

Louis Geetha

.. Respondent

Prayer :- Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C. to set aside the order dated 21.04.2016 made in CMP.No.360 of 2016 in FCMC.No.7 of 2014 on the file of the learned Family Court, Vellore.

For Petitioner : Mr.G.Vinodkumar

For Respondent : Mr.P.Chandrasekar

ORDER

The Criminal revision is directed against the order passed by the learned Family Court, Vellore made in CMP.No.360 of 2016 in FCMC.No.7 of 2014 dated 21.04.2016, dismissing the petition filed by the respondent to reopen the evidence of the respondent.

2.The learned counsel for the petitioner would contend that the petitioner filed application to reopen the evidence of respondent to prove certain facts which comes to the light subsequently. The trial Court failed to note that the respondent/wife married one Vijayakumar and having two children due to the wedlock and living in adultery, the respondent is not eligible to claim maintenance under Section 125 Cr.PC., without considering the above facts, the trial Court dismissed the petition filed by the petitioner and the learned counsel prays to set aside the order of the trial Court and to allow the criminal revision.

3.The learned counsel for the respondent submitted that the present revision petitioner without paying any maintenance amount, dragging on the proceedings, after evidence is over. The trial Court after considering the facts and circumstances of

the case, correctly dismissed the claim of the revision petitioner and there is no illegality or infirmity in the order passed by the trial Court and the learned counsel prays to dismiss the revision petition.

4. In this case, the revision petitioner filed CMP.No.360 of 2016 in FCMC.No.7 of 2014, specifically stating that the present respondent/wife married one Vijayakumar on 03.10.2011 and registered the same before the Sub Registrar Office on 14.10.2011, the same was admitted by the respondent in the witness box. In view of the above specific statement averred in the affidavit is the ground for denying maintenance to the respondent from the revision petitioner. The trial Court ought to have given one more chance to the petitioner to reopen the case to adduce evidence on the side of the petitioner. If the evidence is reopened it will not cause any prejudice to the parties. Further, it will be useful for the Court to come to a correct conclusion about the dispute between the parties. This Court is of the considered view that the order passed by the trial Court is liable to be set aside and the revision has to be allowed by giving one more opportunity to the revision petitioner to reopen the evidence of the respondent.

5. In the result, the criminal revision is allowed by setting aside the order passed by the learned Family Court, Vellore made in Cr.MP.No.360 of 2016 in FCMC.No.7 of 2014 dated 21.04.2016. The trial Court is directed to give a chance to the revision petitioner to reopen the evidence of the respondent's side and close the evidence, within a period of three weeks from the date of receipt of a copy of this order. After giving an opportunity to both sides, the trial Court is further directed to dispose of the main case in accordance with law within a period of four weeks from the date of closing of the evidence, therefrom. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(J)

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Sub Assistant Registrar

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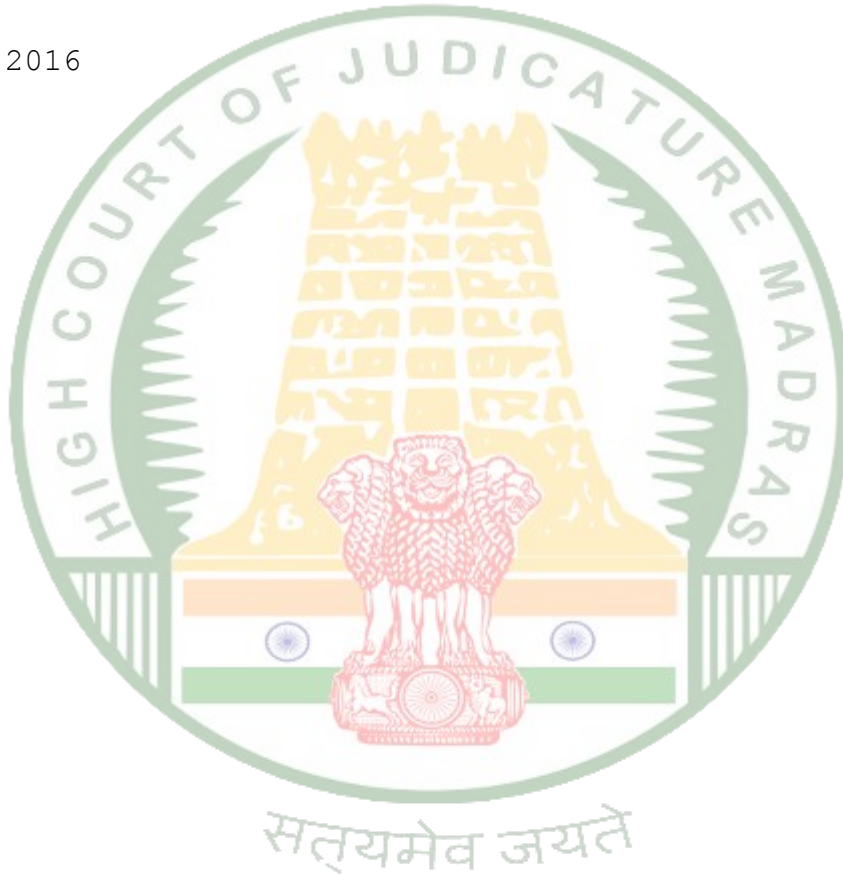
To

The Judge,
The Family Court, Vellore.

1 cc to Mr.G.Vinothkumar, Advocate, sr.52082

Cr1.R.C.No.807 of 2016

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