



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 07.09.2016
CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

WEB COPY

Crl.O.P.(MD) No.8503 of 2016 and
Crl.M.P.(MD) Nos.4117 and 4118 of 2016

B.Sakunthala

... Petitioner/R2

-vs-

Vasantha

... Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records in D.V.O.P.No.10 of 2015 on the file of the learned Judicial Magistrate No.III, Dindigul and quash the same as illegal.

For Petitioner : Mr.A.Hariharan
For Respondent : Mr.K.Marimuthu
For Ms.K.Abiya

Orders Reserved on	Orders Pronounced on
30.08.2016	07.09.2016

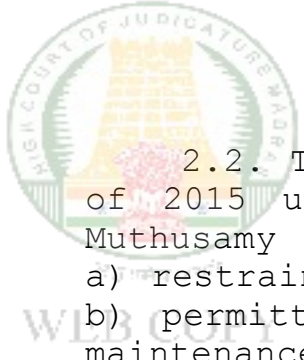
O R D E R

The petitioner, a widow, who has purchased a house property from her father from out of the compensation awarded for the death of her husband and her only son, now facing the complaint laid against her under the Domestic Violence Act, i.e. D.V.O.P.10 of 2015 before learned Judicial Magistrate No.III, Dindigul, seeks to quash the proceedings on the ground that the complaint itself is not maintainable neither on facts nor on the question of law.

Brief Facts:

2. The house property located at Door No.210, Therkoor 7th Lane, Mettupatti, Dindigul Town, Dindigul District was purchased by the petitioner's father Muthusamy for a sum of Rs.12,000/- through a registered sale deed dated 03.02.1986. It is the exclusive and separate property of petitioner's father. The father executed a sale deed in favour of the petitioner through a registered sale deed dated 23.09.2015 for a sale consideration of Rs.12,40,000/-.

2.1. The petitioner demanded vacant possession of the property from the respondent, who has been paying rent to Muthusamy. The respondent agreed to pay Rs.2,500/- per month to the ground floor where she is living and she also agreed to vacate the property by December, 2015. Eviction proceeding has been initiated in H.R.C.O.P.No.5 of 2016, which is pending on the file of Rent Controller District Munsif Court, Dindigul.



2.2. The respondent herein has filed a petition in DVOP No.10 of 2015 under Section 12 of D.V.Act against her father-in-law Muthusamy and this petitioner / sister-in-law, seeking an order, a) restraining the respondents from alienating the house property, b) permitting her to remain in the house property, c) to pay maintenance of Rs.5,00,000/- for her daughter Nirmala. The respondents's husband was working as Office Assistant, who died on 16.06.2003 and the respondent herein has been receiving a sum of Rs.12,000/- as family pension.

3. The main contention of the learned counsel for the petitioner is that the complaint filed by the respondent did not disclose any act of Domestic Violence as contemplated under Section 3 of the said Act and the learned Magistrate, without any basic material / without jurisdiction / without application of mind / without subjective satisfaction / without perusal of records, has taken the complaint on file and therefore, the complaint is liable to be quashed.

3.1. It is the specific contention of the learned counsel for the petitioner that instead of establishing her right in the civil Court, this short-circuited method of filing the complaint under Domestic Violence Act has been adopted by the respondent herein only for the purpose of extracting money from the petitioner.

3.2. It is contended that the respondent is residing in the property only as a tenant and as she was not residing in the property as a shared household, she has no right to maintain the complaint under Domestic Violence Act. In support of this contention, a decision reported in AIR 2007 SC 1118 (S.R.Batra and Another vs. Smt.Taruna Batra) is relied upon.

"As regards Section 17(1) of the Act, in our opinion the wife is only entitled to claim a right to residence in a shared household, and a 'shared household' would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. The property in question in the present case neither belongs to Amit Batra nor was it taken on rent by him nor is it a joint family property of which the husband Amit Batra is a member. It is the exclusive property of appellant No. 2, mother of Amit Batra. Hence it cannot be called a 'shared household'."

3.3. The next contention is that when a dispute regarding property rights needs to be resolved by a Civil Court and if it is given the colour of Domestic Violence, then it is a case of abuse of process of the law and it needs to be quashed. In support of this contention, a decision reported in (2015) 3 MLJ (Cr1) 690 (R.Vinayagam and another vs. M.Prema and others) is relied upon, <https://hccservices.ecourts.gov.in/hccservices/> been held as follows:

"14.....I have to hold that absolutely, there is no evidence that there was domestic violence caused by the respondents.

Whether the husband of the petitioner has got any undivided share in the property in question or not is a matter to be resolved only by the competent Civil Court and a Criminal Court cannot venture to resolve the same....."

3.4. In this case also, whether the husband of the respondent had any undivided share in the property is the subject matter to be decided by the competent Civil Court and not the Criminal Court dealing with the complaint under Domestic Violence Act.

3.5. The 3rd contention is that this complaint under DV Act is the outcome of personal animosity and this has to be quashed. In support of the proposition, a decision reported in Ramesh Rajagopal vs. Devi Polimers Pvt. Ltd., 2016 (4) CTC 769, is relied upon, where-under, it has been held as under:

"15. We find that the allegations that the appellant is guilty of an offence under the aforesaid section are inherently improbable and there is no sufficient ground of proceedings against the accused. The proceedings have been initiated against the appellant as a part of an ongoing dispute between the parties and seem to be due to a private and personal grudge."

4. Prima facie, the contention appears to be correct. In the counter filed before the Court dealing with D.V.Act case, the petitioner herein has specifically stated that, a) her father (vender) had been working as Driver and the property was purchased from out of his individual earnings, b) at the time of purchase, there was only a tide house and thereafter, her father obtained a loan to the extent of Rs.7,00,000/- from the Bank and thereafter, a terraced house was constructed, d) right from plan approval and tax assessment, electricity connection stands in the name of her father, e) in order to meet his ageing requirements and to liquidate the debts and to meet his medical expenses, the father has decided to sell the property, f) the petitioner has already taken only legal steps to get the respondent vacated and as such, there had been no Domestic Violence, as contended by the respondent herein.

5. From the perusal of the contentions and documents, it is evident that if at all, the respondent claims the right over the property in the capacity as wife of the deceased husband, the remedy is only to file a Civil Suit for declaration of her rights and there cannot be a complaint under Domestic Violence Act, when the petitioner herein has resorted to legal remedy. If the legal remedy sought for is branded as domestic violence, then it is a case of abuse of process of law. Therefore, the complaint is liable to be quashed and it is quashed accordingly.

<https://hcservices.courts.gov.in/hcservices/> above observation, this Criminal Original Petition is allowed and the entire proceeding in D.V.O.P.No.10 of 2015 on the file of the learned Judicial Magistrate No.III, Dindigul is



set aside in respect of the petitioner alone. Consequently,
connected miscellaneous petitions are closed

Sd/-

Assistant Registrar(CSI)

/True Copy/

Sub-Assistant Registrar

To:

The Judicial Magistrate No.III,
Dindigul.

+One cc to Mr.A.Hariharan, Advocate, SR.No.50447

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RL/3C/4P/SS3/15/9/2016

PRE-DELIVERY ORDER IN
Crl.O.P.(MD) No.8503 of 2016 and
Crl.M.P.(MD) Nos.4117 and 4118 of 2016
07/09/2016