

HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CrI.R.C. No.1973 of 2015

JUDGMENT:

This criminal revision case is filed under Sections 397 and 401 Cr.P.C. challenging the order dated 25.04.2012 passed in CrI.M.P.No.4338 of 2011 in CrI.M.P.No.3089 of 2010 in MC No.4 of 2007 on the file of the Judicial Magistrate of First Class, Razole.

2. Heard the learned counsel for the petitioner and the learned counsel for Respondents 1 to 3.

3. For the sake of convenience, the parties herein are referred to as petitioner and respondents as arrayed in the court below.

4. It is submitted by the learned counsel for the petitioner that the trial court dismissed CrI.M.P.No.4338 of 2011 on the sole ground that the petitioner did not file the judgment and decree in OS No.86 of 2008. He further submitted that the order passed by the court below is not sustainable either in law or on facts.

5. Per contra, learned counsel for Respondents 1 to 4 submitted that the trial court has considered the judgment and decree in OS No.86 of 2008 and dismissed the petition. He further submitted that there are no grounds, much less legally valid grounds, to interfere with the orders passed by the court below.

6. The facts leading to filing of the present revision case are briefly stated as follows:

The 1st respondent is the wife, 2nd respondent is the daughter and 3rd respondent is the son of the petitioner. The respondents herein have filed

MC No.4 of 2007 on the file of the Judicial Magistrate of First Class, Razole under Section 125 Cr.P.C. seeking maintenance from the petitioner. After full-fledged trial, the learned Magistrate allowed MC No.4 of 2007 on 19.05.2009 by granting monthly maintenance of Rs.3000/- to the 1st respondent and Rs.2000/- each, to respondents 2 and 3. The respondents 1 to 3 herein also have filed OS No.86 of 2008 on the file of the Senior Civil Judge, Razole, under Section 24 of the Hindu Adoptions and Maintenance Act, 1956, claiming maintenance from the petitioner. The learned Senior Civil Judge decreed the suit on 25.08.2010 by granting monthly maintenance of Rs.3000/- to the 1st respondent and Rs.2000/- each to respondents 2 and 3. While things stood thus, the petitioner herein filed Crl.M.P.No.4338 of 2011 for cancellation of the orders dated 19.05.2009 passed in MC No.4 of 2007, in view the decree dated 25.08.2010 passed in OS No.86 of 2008. Upon considering the material available on record, the trial court dismissed the said petition.

7. I have carefully perused the order passed by the court below, more particularly, paras 11 and 13. The fact remains that the respondents herein filed the depositions in OS No.86 of 2008. It is an admitted fact that neither the petitioner nor the respondents filed the judgment and decree in OS No.86 of 2008 before the court below.

8. A perusal of the record clearly reveals that the trial court dismissed the petition mainly on the ground that the petitioner did not file the copy of the judgment and decree in OS No.86 of 2008. For one reason or the other, the petitioner could not file the judgment and decree in OS No.86 of 2008 before the trial court. If this court passes the order on merits, the same may cause prejudice to one of the parties to the proceedings. It is not fair on the part of this court to pass the orders in the

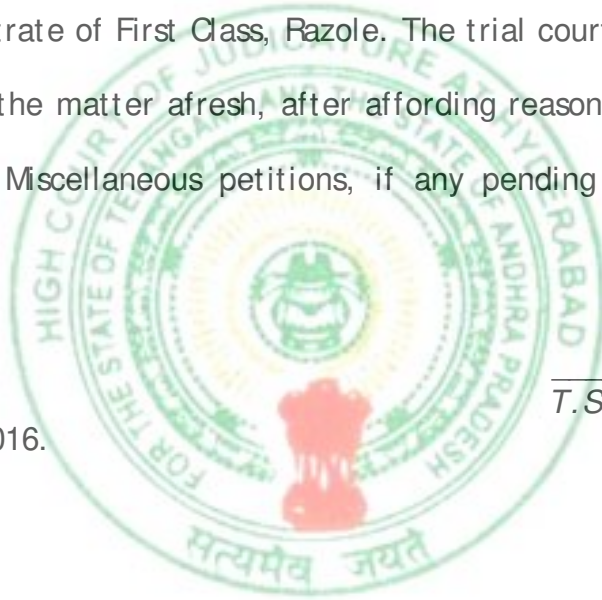
present case on merits, without looking in to the judgment and decree in OS No.86 of 2008.

9. Having regard to the facts and circumstances of the case, I am of the considered view that this is a fit case to remand the matter to the trial court, so as to enable the petitioner to file the judgment and decree in OS No.86 of 2008.

10. In the result, the criminal revision case is allowed by setting aside the impugned order dated 25.04.2012 passed in Crl.M.P.No.4338 of 2011 in Crl.M.P.No.3089 of 2010 in MC No.4 of 2007 on the file of the Judicial Magistrate of First Class, Razole. The trial court is hereby directed to dispose of the matter afresh, after affording reasonable opportunity to both parties. Miscellaneous petitions, if any pending in this case, shall stand closed.

Date: 03.11.2016.
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T.SUNIL CHOWDARY, J



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Date: 03.11.2016

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