

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:22.11.2017
CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM
AND
THE HON'BLE MR.JUSTICE P.KALAIYARASAN

C.M.A.No.3232 of 2017
and
C.M.P.No.20047 of 2017

M.Ramesh Appellant

vs.

1.Yashodhadevi
2.Minor Anbarasu
rep.by Guardian as Mother
1st respondent Yashodhadevi Respondent

Civil Miscellaneous Appeal filed against the order dated 29.11.2016 passed by the Additional Family Court, Coimbatore, in I.A.No.962 of 2015 in H.M.O.P.No.264 of 2013.

For Appellant :Mr.J.Franklin

For Respondents :Mr.C.R.Prasanan

JUDGMENT

(Judgment of the Court was delivered by A.SELVAM,J.)

This Civil Miscellaneous Appeal has been directed against the order dated 29.11.2016 passed in I.A.No.962 of 2015 in H.M.O.P.No.264 of 2013, by the Additional Family Court, Coimbatore.

2.The appellant herein, as petitioner, has filed H.M.O.P.No.264 of 2013, on the file of the trial Court, for getting restitution of conjugal rights; wherein, the present appellant has been shown as respondent.

3.During pendency of the same, the respondents herein, as petitioners, have filed I.A.No.962 of 2015, on the file of the trial Court under Section 24 of the Hindu Marriage Act, 1955, praying to pass an interim monthly maintenance and also an order with regard to litigation expenses.

4.The trial Court, after considering the available evidence on record, has partly allowed the petition and thereby directed the respondent therein to pay interim monthly maintenance of Rs.5000/- to the first respondent/first

petitioner and also awarded an amount of Rs.5000/- towards litigation expenses, by way of passing the impugned order and the same is being challenged in the present Civil Miscellaneous Appeal.

5.The learned counsel appearing for the appellant/respondent has contended to the effect that the first respondent/first petitioner is an employee and also drawing a monthly salary of Rs.10,000/- and under the said circumstances, she is able to maintain herself. But the trial Court, without considering the averments made in the counter, filed on the side of the appellant/respondent, has erroneously passed the impugned order and therefore, the same is liable to be set aside.

6.Per contra, the learned counsel appearing for the respondents/petitioners has contended that the second respondent/second petitioner is under the care and custody of the first respondent/first petitioner and the first respondent/first petitioner is not doing any work and in fact, she is not having sufficient means to maintain herself and also to maintain the second respondent/second petitioner; considering the factual situation of the present case, the trial Court has rightly awarded an interim monthly maintenance of Rs.5000/- to the first respondent/first petitioner and also litigation expenses of Rs.5000/-, by way of passing the impugned order and the same does not require any interference.

7.It is an admitted fact that the first respondent, as petitioner, has filed H.M.O.P.No.264 of 2013, on the file of the trial Court for getting restitution of conjugal rights, wherein, the appellant herein has been shown as sole respondent.

8.During pendency of H.M.O.P.No.264 of 2013, I.A.No.962 of 2015 has been filed under Section 24 of the Hindu Marriage Act, 1955.

9.The only defence taken on the side of the appellant/respondent is that the first respondent/first petitioner has been earning monthly income of Rs.10,000/-. But, to substantiate the contention put forth on the side of the appellant/respondent, no document has been filed.

10.Considering the fact that the first respondent/first petitioner is the legally wedded wife of the appellant/respondent and also considering that I.A.No.962 of 2015 is legally maintainable so far as the first respondent/first petitioner is concerned and the litigation expenses, this Court is of the view that the contention put forth on the side of the appellant/respondent cannot be accepted. Further, the trial Court has awarded only a reasonable amount towards the interim monthly maintenance and also litigation expenses.

11.Considering the overall circumstances available in the present case, the order passed by the trial Court does not call for any interference and altogether, the present Civil Miscellaneous Appeal deserves to be dismissed.

In fine, this Civil Miscellaneous Appeal is dismissed without costs. The impugned order passed in I.A.No.962 of 2015 in H.M.O.P.No.264 of 2013, by the trial Court is confirmed. The trial Court is directed to dispose of H.M.O.P.Nos.264 of 2013 and 15 of 2013, before the end of January 2018 and report the same to the Registry without fail. Connected miscellaneous petition is dismissed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

msk

To

- 1 The Judge
The Additional Family Court, Coimbatore
- 2 The Section Officer,
Judicial Section,
High Court, Madras.

+lcc to Mr.C.R.Prasanan, Advocate SR.No.83175

C.M.A.No.3232 of 2017

KJI(CO)

sm:28.12.2017

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