

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.08.2017

Coram

The Hon'ble Mr.Justice A.D.JAGADISH CHANDIRA

Criminal Original Petition No.27716 of 2012
and
Crl.M.P.Nos. 1 and 2 of 2012

Devaraj .. Petitioner/Petitioner/Respondent

..VS..

Karuppayee .. Respondent/Respondent/Petitioner

Criminal Original Petition filed under Section 482 of Criminal Procedure Code, seeking to set aside the order passed by the learned Principal Sessions Judge, Namakkal District in Crl.R.C.No.11 of 2012 dated 13.09.2012 confirming the judgment of the learned Chief Judicial Magistrate, Namakkal rendered in M.C.No.64 of 2011 dated 13.06.2012.

For Petitioner : Mr.C.D.Johnson

For Respondent : No representation.

ORDER

This petition has been filed by the son challenging the order passed by the learned Principal Sessions Judge, Namakkal, confirming the order passed by the learned Chief Judicial Magistrate, Namakkal, directing the petitioner to pay Rs.6,000/- per month towards maintenance to his mother/respondent herein from the date of petition i.e. 21.12.2011.

2. Brief facts which are leading to file this Criminal Original Petition are as follows:-

(i) The respondent herein who is none other than the mother of the petitioner herein had filed a petition under Section 125 (1) Cr.P.C., in M.C.No.64 of 2011, on the file of the Chief Judicial Magistrate, Namakkal, claiming maintenance for a sum of Rs.15,000/- per month against her son alleging that she is aged about 70 years and she is not able to do any work and to earn money and she is not able to live independently without assistance and that she requires a sum of Rs.15,000/- per month as maintenance. The respondent further contended that the properties worth about Rs.10 Crores, was originally belonged to Sellappa Gounder, husband of the respondent devolved from the joint family as well as by purchase and that from the family properties the petitioner is getting income of Rs.50,000/- per month by leasing out the properties and that the petitioner is also doing

money lending business and by which, earning Rs.50,000/- per month.

(ii) The petitioner herein filed a counter contending that he is not having property and that he is bedridden and also suffering from spinal cord pain and that the respondent got properties by way of partition and leased out the property for a sum of Rs.12,000/- and living with her daughter and further the respondent is having daughters and she has not made any claim against her daughters and hence prayed for dismissal of the petition.

3. On the basis of the pleadings, the case was taken up for trial. On the side of the respondent/mother two witnesses were examined as P.W.1 and P.W.2 and marked four documents as Exs.P1 to P4 and on the side of the petitioner/son one witness was examined as R.W.1 marked two documents as Exs.R1 and R2.

4. On consideration of the pleadings of the parties coupled with the oral evidence as well as documentary evidence, the learned Chief Judicial Magistrate has directed the petitioner/son to pay a maintenance a sum of Rs.6,000/- per month to the respondent/mother from the date of the petition i.e. 21.12.2011.

5. Aggrieved by the order of maintenance passed by the learned Chief Judicial Magistrate, Namakkal, the petitioner/son had preferred a

Criminal Revision in Criminal Revision Petition No.11 of 2012, on the file of the Principal Sessions Judge, Namakkal. The learned Sessions Judge after considering the documents Ex.P4 partition deed dated 19.8.2009, Ex.P1 plaint copy in a suit filed by the respondent/mother for partition in O.S.No.138/2011 on the file of the District Court, Namakkal, came to the conclusion that the family members are having enormous properties and that in a partition the respondent/mother was given one house worth Rs.2,15,000/-, whereas the other two daughters were given each Rs.10,000/- and the petitioner/son was given B Schedule property worth about Rs.2,87,98,000/- and that the petitioner/son had appropriated all the properties worth about Rs.3 Crores, and that as evidenced from Ex.P4, the petitioner/son is well of and also having substantial property, whereas the respondent/mother is given only house, for that to reside in the property and that there is no income in the property and that the other two sisters were also given very meagre property sum of Rs.10,000/- each. Ultimately, the learned Principal Sessions Judge had dismissed the Criminal Revision thereby confirming the order passed by the learned Chief Judicial Magistrate, Namakkal.

6. Aggrieved by the said order, the petitioner/son has filed the present Criminal Original Petition to set aside the order passed by the learned Principal Sessions Judge, Namakkal, confirming the order

passed by the learned Chief Judicial Magistrate, Namakkal.

7. I have gone through the records and heard Mr.C.D.Jhonson, learned counsel appearing for the petitioner.

8. It is contended by the learned counsel for the petitioner that in a partition the respondent/mother was given one house property worth Rs.2,15,000/- and that she is deriving rental income from that property and the other two daughters were given each Rs.10,000/-. Moreover, the mother of the petitioner had been instigated by his sisters who are antagonized against him due to family disputes and that his mother is capable of maintaining herself and that the petitioner is physically incapable and he was suffering from spinal cord problem and he was bedridden and he was unable to maintain his mother and that the order passed by the Courts below have to be set aside.

9. On perusal of the orders passed by the Courts below it is seen that the Courts below have given a cogent finding that the petitioner has been given property worth about Rs.3.00 Crores in a family settlement and that the petitioner/son had appropriated all the properties and that there is no justification in the petitioner refusing to maintain his mother. It is relevant to mention the Judgment of this Court reported in **(2016) 1 MLJ (Crl) 296 (P.Elangovan vs.**

Pondevaki and others), wherein it has been stated that *"the liability to pay maintenance to the parents is a dharma to be performed than a duty to be performed, as duty is only one aspect of dharma."* (para 15.5).

10. In paragraph 16 of the above Judgment cited supra the learned Judge has held as follows:-

"16. The right of the mother to expect the children to maintain is not only statutory right, constitutional right, fundamental right, natural right and moral right, but also the human right. Under such circumstances, the son ought not to have made the mother to approach the Court to make the son realise his duties and responsibilities. Paradoxically the son instead of speaking about his duties and responsibilities has spoken about the duties and responsibilities of the mother, of which he has no authority to speak. It is said that God cannot be present everywhere and therefore, He created mothers. One of the Poet, in recent times, wrote about the case sheet, maintained by a Doctor, touching the delivery of his patient as: "the delivery note was the descriptive of everything excepting the pains suffered by the mother during delivery." Delivery is rightly called the second birth of the mother."

11. In a judgment reported in **1980 CRI. L.J. 256 (Pandurang**

Bench of the Bombay High Court has held as follows:- (Paragraphs 9 and 11)

"9. The provision in Section 125(1) is a very special provision enabling the Magistrate to make an order against a son or daughter for payment of a monthly allowance for the maintenance of the father or mother who is unable to maintain himself or herself. The provision in S.125 is one of general application and is not related to the personal law of the parties. Implicit in the provision, therefore, is the statutory recognition of the obligation that a son who has sufficient means is bound to maintain a father or mother who is unable to maintain himself or herself. The provision is really in the nature of an ameliorative provision made for the first time recognizing the right of infirm parents who are unable to maintain themselves to be maintained by their son or daughter who is possessed of sufficient means as also providing a remedy to enforce that right. It may be noted that the corresponding provisions in Section 488 of Cr.P.C., 1898, did not make any provision with regard to providing maintenance to parents.

11. Though section 125 is of general application, we may point out that the obligation of a Hindu to maintain his aged and infirm parents was given a statutory recognition by enacting section 20 of the Hindu Adoptions and Maintenance Act, 1956. Sub-section (3) of section 20 which is the relevant section dealing with such an obligation, reads as

follows :--- "The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends in so far as the parent or the unmarried daughter, as the case may be, unable to maintain himself or herself out of his or her own earnings or other property". Dealing with this provisions, the learned commentator of Mulla's Hindu Law, 14th edition, has observed at page 1023 : "A Hindu is under a legal obligation to maintain his wife, his minor sons, his unmarried daughter and his aged parents whether he possessed any property or not. The obligation to maintain these Pandurang Bhaurao Dabhade vs Baburao Baburao Dabhade And Anr. on 18 April, 1979 Indian Kanoon - <http://indiankanoon.org/doc/1230457/> 3 relations is personal and legal in character and arises from the very existence of the relationship between the parties The present sections gives statutory form to the legal obligation of a Hindu also to maintain his minor children and his aged or infirm parents. But the law laid down in the section goes further than that and Rules that not merely a male Hindu-as was the law previously applicable but a female Hindu as well as is now under a legal obligation to maintain legitimate or illegitimate children and aged or infirm parents".

12. In the case and facts on hand, the submission of the counsel that his mother has been given a house cannot be a ground to refuse maintenance and the conduct of neglect of the mother by the

petitioner is legally and morally not acceptable.

13. Taking into consideration the above judgment and the facts on hand, this Court feels that the petitioner has not made out a case and hence this Criminal Original petition is dismissed with costs of Rs.10,000/- to be paid to the respondent/mother towards her legal expenses.

24.08.2017

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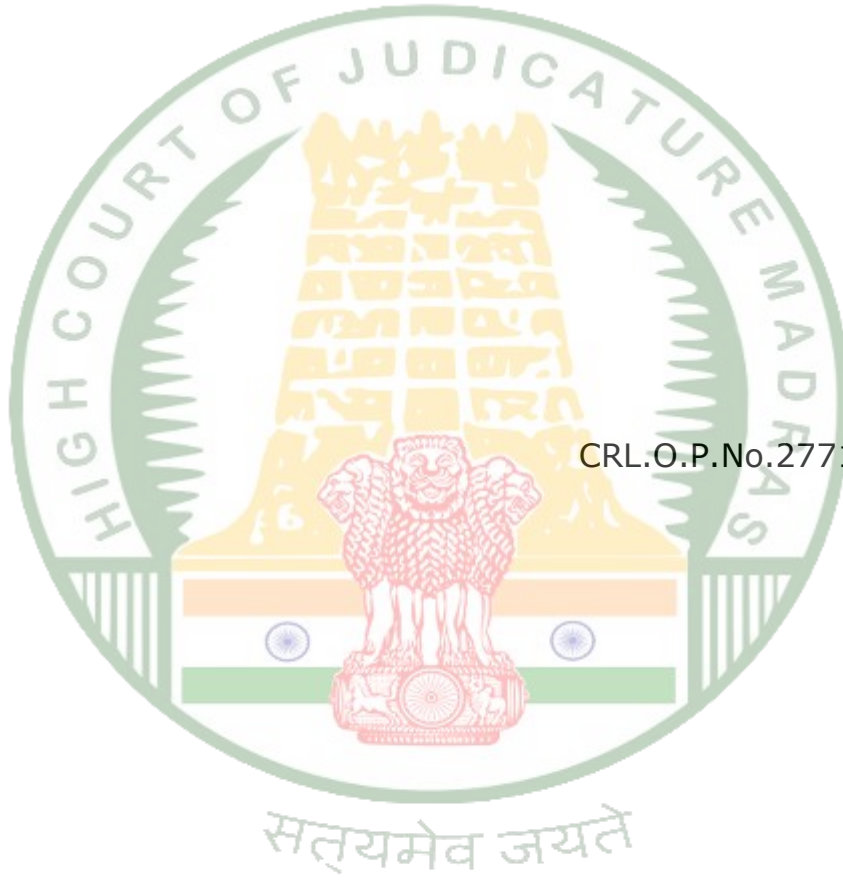
The Chief Judicial Magistrate, Namakkal



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A.D.JAGADISH CHANDIRA,J.,

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