

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

**Crl.RC.MP.No.569 of 2017
in/
and
CRIMINAL REVISION CASE No.287 of 2015**

ORDER :

The revision petitioner is respondent in MC.No.24 of 2013 on the file of the Judge, Family Court, Nalgonda District, which is outcome of the application filed under Section 125 Cr.P.C., claiming maintenance by wife and 2 minor children, represented by the mother as guardian, of Rs.10,000/- per month each and, on contest, from the evidence of P.Ws.1 and 2 and with reference to Exs.P.1 to P.6, which are copies of wedding card, ration card, FIR, Sale Agreement dated 07.06.2012, Salary Certificates dated 29.01.2014 and 27.01.2014 and from the oral evidence of RW.1, the learned Judge, Family Court, awarded maintenance of Rs.6,000/- per month each to the 1st petitioner – wife, and Rs.3,000/- per month each to petitioner Nos.2 and 3 – children, and the same is now impugned in the present revision, contending that he purchased land of an extent of Ac.1.20 gts. in Sy.No.441 and an extent of Ac.1.05 gts. in Sy.No.478 in her name and she sold away the same under registered Sale Deed dated 07.07.2014 vide document No.2015/2014, for Rs.3,09,000/- to one Smt. Lodangi Lalitha and the amount is available with her and the same is not considered, and the other contention is that the 1st petitioner is a Post-Graduate in M.A. (Telugu), besides completed her B.Ed. course and she is capable of earning and she is shown earlier worked under Exs.P.1, P.5 and P.6 and was earning and, these

factors had it been properly taken into consideration, she could not be awarded maintenance. Hence, the present revision.

2. In the course of hearing the revision, the petitioner filed an application in Crl.RC.MP.No.569 of 2017 seeking to receive additional documents, but for a copy of the Sale Agreement dated 17.01.2014 the other two documents are certified copies of depositions of P.Ws.1 and 2, and R.W.1; and a certified copy of chief and cross-examination of petitioner in DVC.No.25 of 2013.

3. No doubt, the deposition of a living person in other proceedings *per se* not admissible without the consent, but for to use it for not within the purview of Sections 32 and 33 of the Indian Evidence Act, 1872 by confronting in cross-examination under Sections 145 and 155(3) of the said Act, and without putting to the witnesses, it cannot be looked into. So far as sale agreement is concerned, even the revision grounds speak, the sale agreement shows for Rs.14,68,000/- and, if at all, the sale agreement reflecting the correct value and in the sale deed, it is under-valued and also requires to be put to the witness and subject to admissibility, no doubt, to the extent saved by Section 14 of the Family Courts' Act.

4. Having regard to the above, so far as entitlement of maintenance by the wife, from these aspects raised, which could not find place before the lower Court, in the revision, the same cannot be considered, but for to that extent to remand to the Judge, Family Court, for fresh enquiry with an opportunity of adducing evidence with reference to the same, by upholding the quantum of maintenance awarded to two children as interim

maintenance, in the meantime, by setting aside the order of maintenance awarded to the 1st respondent-wife.

5. Accordingly, the present Criminal Revision Case is allowed and the documents petition viz., Crl.RC.MP.No.569 of 2017 is disposed of with a direction to the Court below to receive the said documents on file, by restoring M.C.No.24 of 2013 and dispose of the same, afresh, by conducting further enquiry.

6. As a sequel, miscellaneous petitions pending, if any, in this revision shall stand closed.

Dr. JUSTICE B. SIVA SANKARA RAO

10.02.2017
Msr



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