

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on : 25.04.2018]

[Pronounced on : 23.08.2018]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CrI.R.C.No.1245 of 2017

and

CrI.M.P.Nos.12052 and 13111 of 2017

Pappathi Ammal ... Petitioner/Third Party

... Vs ...

1. Karpagam
 2. Minor Hari Prakash
 3. Minor Jeevan Prakash
- Minor second and third respondents
are represented by their guardian/Mother
4. Balu @ Bala Murugan ... Respondents

PRAYER: Criminal Revision Case filed under Section 397 r/w. 401 of Cr.P.C. against the order dated 11.07.2017 passed in C.A.No.5 of 2017 on the file of the learned III Additional Sessions Judge, Salem, reversing the order passed in C.M.P.No.2522 of 2016 in DVOP No.71 of 2013 on the file of the learned Judicial Magistrate, Additional Mahila Court, Salem, and to allow the above criminal revision.

For Petitioner : Mr.R.Nalliyappan
For RR-1 to 3 : Mr.S.F.Mohamed Yousuf
For R-4 : No Appearance

ORDER

This Criminal Revision Case is filed against the order dated 11.07.2017 passed by the learned III Additional Sessions Judge, Salem, in C.A.No.5 of 2017, reversing the order passed by the learned Judicial Magistrate, Additional Mahila Court, Salem, in C.M.P.No.2522 of 2016 in DVOP No.71 of 2013.

2. The revision petitioner herein is the third party in D.V.O.P.No.71 of 2013. The fourth respondent is the husband of the first respondent and respondents 2 and 3 are the minor children of respondents 1 and 4. The petitioner herein is the mother of the fourth respondent and mother-in-law of the first respondent.

3. The petitioner submits that due to the dispute between the first and fourth respondents, the first respondent had filed an application against the fourth respondent in D.V.O.P.No.71 of 2013 on the file of the learned Judicial Magistrate, Additional Mahila Court, Salem, under Section 12 of the Domestic Violence Act. In the above application, the first respondent had filed an application in C.M.P.No.142 of 2016, wherein, the Court below has permitted the first respondent to enter and reside along with her children in the house situated at D.No.260, Chinnappan Street, Arisipalayam, Salem. Since the petitioner herein being a title holder to the above said property, the first respondent has no right over the said property. Under such circumstances, the Court below ought not to have grant the relief under Section 2(s) and 17(1) of the Domestic Violence Act to share the household and the same is not sustainable.

4. Learned counsel appearing for the petitioner submitted that the property in question viz., Door No.260, situated at Chinnappan Street, Arisipalayam, Salem, is the exclusive property of the petitioner herein. However, by suppressing the fact that she is the sole and absolute owner of the property, the first respondent herein, who is the daughter-in-law of the petitioner, has obtained protection order and also shared residential order as if it is a shared residence and accordingly, obtained an ex-parte order in D.V.O.P.No.71 of 2013. In an application filed by the petitioner herein in C.M.P.No.2522 of 2016, the same was modified and was directed to pay a sum of Rs.3,000/- towards rental fees for providing alternative accommodation. However, an appeal was filed by the daughter-in-law in C.A.No.5 of 2017 and the learned III Additional Sessions Judge, Salem, has allowed the said appeal without following the ratio laid down by the Hon'ble Supreme Court reported in AIR 2007 SC 1118 [S.R.Batra V. Taruna Batra].

5. Learned counsel appearing for the respondents 1 to 3 submitted that the first respondent herein is the grand daughter of the petitioner herein and the fourth respondent is none other than the maternal uncle of the first respondent. However, as the fourth respondent has developed illicit intimacy with another lady, they were

living separately for some time in the petition mentioned property and hence, the learned III Additional Sessions Judge, Salem has rightly granted the residential order and made submission in support of the order passed by the learned Sessions Judge.

6. This Court has considered the submissions made by the learned counsel appearing for the petitioner and the learned counsel appearing for respondents 1 to 3 and perused the records.

7. It appears that the first respondent herein, who is the wife of the fourth respondent and mother of respondents 2 and 3, moved D.V.O.P.No.71 of 2013 before the learned Judicial Magistrate, Additional Mahila Court, Salem, for maintenance, protection order and residential order under Section 17(1) of the Domestic Violence Act inter alia residential order in respect of Door No.260, Chinnappan Street, Arisipalayam, Salem.

8. On coming to know about the fact that the revision petitioner namely, Pappathi Ammal, the third party in the application in C.M.P.No.115 of 2014 contended that it is the exclusive and absolute property of her and hence, the same cannot be treated as shared household as per Section 17(1) of the Domestic Violence Act. On behalf of the revision petitioner herein, no witness was examined and Exs.P.1 to P.10 were marked and on behalf of the first respondent, wife examined herself as R.W.1 and one Duraisamy was examined as R.W.2 and documents Exs.R.1 to R.24 were marked.

9. It appears that after going through the documents Exs.P.4 to P.6-Sale Deeds and Ex.P.7-Gift deed filed by the revision petitioner herein and also taking note of the decision of the Hon'ble Supreme Court reported in AIR 2007 SC 1118 [S.R.Batra V. Taruna Batra], the learned Judicial Magistrate, Additional Mahila Court, Salem, by an order dated 22.12.2016 modified the same by revoking the earlier order in respect of Door No.260, Chinnappan Street, Arisipalayam, Salem, and awarded Rs.3,000/- towards rent for alternative accommodation of the first respondent/daughter-in-law. However, it appears that without appreciating the proper factual position and the title deeds produced by the petitioner/mother-in-law, the lower Appellate Court has allowed the C.A.No.5 of 2017 which is under challenge before this Court.

10. In the decision reported in AIR 2007 SC 1118 [S.R.Batra V. Taruna Batra], at paragraph Nos.17 and 28, the Hon'ble Supreme Court has observed as follows:-

"17. Here, the house in question belongs to the mother-in-law of Smt.Taruna Batra and it does not belong to her husband Amit Batra. Hence, Smt. Taruna Batra cannot claim any right to live in the said house.

28. 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'."

11. In view of the above decision of the Hon'ble Supreme Court which is binding upon all the Subordinate Courts, I am of the considered view that the learned III Additional Sessions Judge, Salem, has committed an error in not properly applying the law on the facts and circumstances of the case. In view of the title deeds marked as Exs.P.4 to P.7, and Genealogical tree of Govindan and Pappathyammal family which is marked as Ex.P.8 and the law laid down by the Hon'ble Apex Court in the above case, the property which is exclusively belonged to the mother-in-law, the daughter-in-law cannot claim as a shared household right.

12. In this view of the matter, the order passed by the learned III Additional Sessions Judge, Salem, in C.A.No.5 of 2017, reversing the order passed by the learned Judicial Magistrate, Additional Mahila Court, Salem, is hereby set aside and the order passed in C.M.P.No.2522 of 2016 in DVOP No.71 of 2013 by the learned Judicial Magistrate, Additional Mahila Court, Salem, is restored and the above criminal revision case is allowed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS)

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Sub Assistant Registrar

To

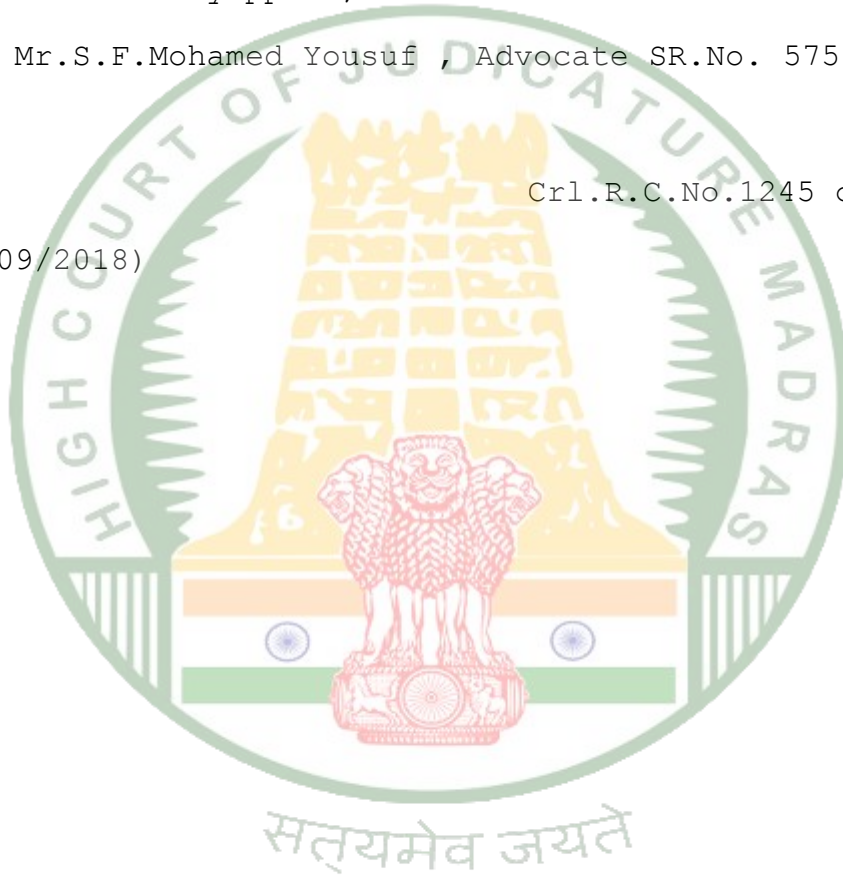
1. The III Additional Sessions Judge,
Salem.
2. The Judicial Magistrate,
Additional Mahila Court,
Salem.

+1cc to Mr.R.Nalliyappan , Advocate SR.No. 57513

+1cc to Mr.S.F.Mohamed Yousuf , Advocate SR.No. 57568

Order
in
Crl.R.C.No.1245 of 2017

ASK(17/09/2018)



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