

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on : 29.06.2018]

[Pronounced on : 10.07.2018]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.416 of 2018

and

Crl.M.P.No.5077 of 2018

1. R.Eswaran
2. R.Palanisamy Petitioners

... Vs ...

1. K.Ramasamy Gounder
2. R.Deivalakshmi Respondents

PRAYER: Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C., against the order dated 23.02.2018 made in C.M.P.No.304 of 2017 in M.C.No.4 of 2017 on the file of the Family Court, Erode.

For Petitioners : Mr.N.Manokaran

For Respondents : Mr.G.Gokul

ORDER

The petitioners herein are sons of the respondents-parents. The petitioners in this revision are the respondents in M.C.No.4 of 2017. The respondents herein have filed a petition in M.C.No.4 of 2017 before the Family Court, Erode, under Section 125 of Cr.P.C., claiming maintenance of Rs.10,000/- per month to each, in which, at the time of the trial, the petitioners, who are the respondents in the above said M.C.No.4 of 2017, marked certain documents said to be the Deed of Assurance as Ex.R.2. Thereafter, the respondents herein have filed a petition in C.M.P.No.304 of 2017 before the Family Court, Erode, to de-mark the documents on the ground that the same cannot be received in evidence as per Sections 35 and 36 of the Indian Stamp Act, 1899 (hereinafter referred to as the Act) and the same was allowed by the Family Court and hence, the present criminal revision.

2. The brief facts leading to the filing of the above criminal revision case is that the parents of the petitioners have filed a petition in M.C.No.4 of 2017 before the Family Court, Erode, under Section 125 of Cr.P.C., claiming maintenance of Rs.10,000/- per month to each, from the petitioners/sons. Before the Family Court, the petitioners

herein have entered appearance and filed their counter statement on 14.02.2017 inter alia contended that the first respondent herein/father on his own executed a Deed of Assurance dated 28.03.2016 before a Notary Advocate. However, the respondents herein have been instigated by a stranger to file the above M.C.No.4 of 2017 for an oblique motive and for extraneous reasons.

3. During the course of the trial, the second respondent herein was examined as P.W.1 and the first respondent herein was examined as P.W.2. The second petitioner was examined as R.W.1, one Sadasivam was examined as R.W.2 and one Krishnan was examined as R.W.3. During the course of an enquiry, the above mentioned Deed of Assurance dated 28.03.2016 was marked as Ex.R.2 without any objection at the time of marking. Further, R.W.2 was cross examined at length in respect of the said document Ex.R.2. Further, Ex.R.2 has been referred to in the counter statement filed in M.C.No.4 of 2017 and also produced before the jurisdiction police during the course of the enquiry held on the complaint dated 14.12.2016 addressed to the superintendent of Police and to the District Collector.

4. Then, the Deed of Assurance was marked as Ex.R.2 during the course of evidence of R.W.1. Thereafter, the parents, who are the petitioners in the maintenance case, have filed a petition in C.M.P.No.304 of 2017 under Order 13 Rule 3 and Section 151 of C.P.C. to de-mark the document Ex.R.2 on the ground that the same is not in consonance with Sections 35 and 36 of the Act and the same was allowed.

5. Learned counsel appearing for the petitioners would contend that the main case namely, M.C.No.4 of 2017 was filed by the parents as against their two sons, the respondents therein (petitioners herein) under Section 125 of Criminal Procedure Code and therefore, the petition filed under Order 13 Rule 3 and Section 151 of C.P.C. is not maintainable, since the main relief is under the Criminal Procedure Code and hence, the order of the trial Court is erroneous in law.

6. Per contra, the learned counsel appearing for the respondents/parents would contend that during the absence of the Advocate in the proceedings before the Family Court, the respondents therein, who are the sons, have marked the document Ex.R.2 which according to them, is a Deed of Assurance and the same cannot be marked for want of registration and also for want of violation of Section 35 of the Act. Learned counsel for the respondents relied upon a decision of this Court reported in 2013 (2) CTC 832 [D.Balachandran Vs. T.C.Shanmugam], wherein, it is held as follows:-

"On combined reading of both provisions,
held, unstamped document even if admitted in
evidence, cannot be acted upon by Court.

Reliance upon and admitted unstamped document by Court prohibited by Section 35 of the Act. In such circumstances, application filed by defendant/petitioner to reject unregistered and unstamped Lease Deed, held wrongly rejected by trial Court. Application allowed."

7. Section 35 of the Indian Stamp Act, 1899 reads as follows:-

"35. Instruments not duly stamped inadmissible in evidence, etc.— No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped:

Provided that—

(a) any such instrument [shall], be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

(b) here any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it;

(c) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;

(d) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (5 of 1898);

the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government]] or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act."

8. After hearing both sides and after perusing the relevant provisions of law, it is seen that the parents, who are the petitioners in M.C.No.4 of 2017 before the Family Court, Erode, have filed a petition under Section 125 of Cr.P.C. claiming maintenance of Rs.10,000/- per month to each. The petitioners herein/sons, who are the respondents therein have filed counter denying their entitlement inter alia contending that on 14.02.2017 their parents have executed a Deed of Assurance before the Notary Public that they have received Rs.7 lakhs as one time settlement and permanent alimony and as such, they cannot claim further maintenance from their sons.

9. It appears that after the examination of the petitioners' side, when the matter was posted for the respondents' side evidence in the M.C.No.4 of 2017 one of the son was examined as R.W.1 and marked Exs.R.1 and R.2. Ex.R.2 is said to be the Deed of Assurance and wherein, it is projected that the property, which was purchased in the name of the father, is actually purchased from and out of the income derived by the son and as a one time settlement, parents have been given Rs.7 lakhs and they are not entitled for any future maintenance, so is the contention. It appears that the Family Court has proceeded on the decision of this Court reported in 2013 (2) CTC 832 cited supra. According to the learned counsel for the petitioners, since it is a proceeding under Criminal Procedure Code, the petition filed under the Civil Procedure Code viz., Order 13 Rule 3 and Section 151 of C.P.C. cannot be made applicable.

10. Per contra, the sum and substance of the rival submission being that since the document is unstamped and unregistered, the same cannot be received as per Sections 35 and 36 of the Act.

11. This Court has given its anxious consideration to the above rival contentions. Admittedly, the petition is filed before the Family Court, Erode. Though the petition is filed under Section 125 of Cr.P.C., in view of the Family Courts Act, 1984 under which, Family Courts Act have been established, they are governed by the provisions of the Family Court Act.

12. Section 14 of the Family Courts Act reads as follows:-

"14. Application of Indian Evidence Act, 1872. A Family Court may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872."

13. So to say, the Family Court can receive as evidence any document whether or not the same would be relevant and admissible under the Indian Evidence Act, 1872. Therefore, this Court is of the considered view that Ex.R.2, which is ordered to be de-marked, under the impugned order can be received in evidence in view of Section 14 of the Family Courts Act, 1984.

14. It is hereby clarified that the Family Court being a creature under Special Act viz., 'Family Courts Act', while dealing with the dissolution of marriage and restitution of the marriage as the case may be, work as that of the Civil Court work and while dealing with Section 125 of Cr.P.C., it has to work as a Criminal Court. However, in view of the specific provision under Section 14 of the Family Courts Act, 1984, the same has overriding effect over the other provision of C.P.C. or Cr.P.C. including the Indian Evidence Act as indicated in Section 14 of the Family Courts Act and therefore, the contention of the learned counsel for the petitioners that the petition filed under Order 13 Rule 3 (1) of CPC in the maintenance proceedings is not maintainable, does not applicable to the maintenance petitions filed before the Family Court.

15. I am hesitate to add that though the same can be upheld in respect of proceedings in Judicial Magistrate Court dealing with Section 125 of Cr.P.C., so also in respect of the above said decision relating to admissibility of document and marking of the document relating to the provisions governed under the provisions of Sections 35 and 36 of the Indian Stamp Act, the civil Court viz., the Sub-Courts, which are dealing with the matrimonial disputes, may be applicable.

16. But when the similar matter being dealt with by the Family Court and the Family Court being established under Family Courts Act, the provisions of the Family Court alone as far as possible shall be applicable, since it being the Special Acts which overrides the General Act. The Courts below viz., Family Court and other Sub-Courts dealing with matrimonial disputes and Judicial Magistrate dealing with cases of 125 Cr.P.C. have to bear this subtle difference in the nature of proceedings.

17. In this view of the matter, the contention of both the learned counsel stands negatived and as observed in the proceeding paragraph, Section 14 of the Family Courts Act

alone shall govern the proceedings pending before the Family Court. In this view of the matter, the order passed by the Family Court, in C.M.P.No.304 of 2017 dated 23.02.2018 is hereby set aside and the Criminal Revision Case is allowed and the marking of the Deed of Assurance as Ex.R.2 is restored and the Family Court, Erode, is directed to proceed with the maintenance case and dispose of the same in accordance with law. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

Jrl

To

The Judge, the Family Court,
Erode.

+ 1 cc to Mr. N. Manokaran, Advocate Sr.45038

+ 1 cc to Mr.P.Muthukumarasamy, Advocate Sr.44851

Crl.R.C.No.416 of 2018

BS(CO)
EU(26/07/2018)

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