IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON :25.06.2018

ORDERS PRONOUNCED ON:03.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRL.R.C.NO.715 OF 2018
AND
CRL.M.P.NO.8241 OF 2018

Joy Brita Punitha Angel ...Petitioner

Vs.

Selvaraj ...Respondent

PRAYER:-
Petition filed under Section 397 read with 401 of the Criminal Procedure Code, to set aside the order dated 29.11.2017 passed in Crl.A.No.02 of 2017 passed by the learned Principal District and Sessions Court, Perambalur reversing the order dated 05.01.2017 passed in Crl.M.P.No.1754 of 2016 in M.C.No.02 of 2016 by learned Additional Mahila Court, Perambalur.

For Petitioner : Mr.T.Seenivasan

O R D E R

The petitioner has preferred this revision against the order passed in Crl.A.No.02 of 2017 on the file of the learned Principal District and Sessions Court, Perambalur reversing the order dated 05.01.2017 passed in Crl.M.P.No.1754 of 2016 in M.C.No.02 of 2016 by learned Additional Mahila Court, Perambalur.

2. The case of the petitioner is that the petitioner herein was married one Anandha Vimalraj as per Christian rites and customs on 16.09.2004 who is working in a reputed Software Company in Chennai and they have begotten a male child on 22.06.2008 who was named as Kevin and subsequently, the petitioner later learnt that Anandha Vimalraj having elicited intimacy with a servant maid and hence, the husband has sent the petitioner and she stay to her house of the respondent at Door No 215, Samiyappa Nagar, Perambalur. Since the husband is not

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looking them and she has moved the maintenance case in Crl.A.2/17 before the learned Additional Judicial Magistrate under the Domestic Violence Act in M.C.No.2 of 2016 and file a Crl.M..No.1754 of 2016 for a residential order to reside in the petition premises.

3. By an order dated 5.1.2017, the learned Judicial Magistrate, Additional Mahila Court has allowed the application on behalf of the second respondent namely, the father-in-law of the petitioner herein. It is specifically contended that the suit property is a self-acquired property of the said Selvaraj and he is being the sole owner and at one occasion, the petitioner herein namely the daughter-in-law came and reside along with his son and hence, the same cannot be treated as a "share household" as defined of the Domestic Violence Act.

4. On consideration of the evidence before the Court, the Magistrate has allowed the Crl.M.P.No.1754 of 2016. Aggrieved against the said order, the said selvaraj, the second respondent before the trial Court has moved the Crl.A.No.2 of 2017 and after hearing both the parties on consideration of the fact that the petition property is admittedly being the sole and exclusive property of the father in law- (the second respondent before the trial Court). She cannot seek any residential order under Section 2(f) and 2(s), by following the decision of the Hon'ble Apex Court in 2007(3) SCC 169 S.R.Patra and another Vs.Taruna Batra and allowed the Criminal Appeal. As against the said order, the petitioner has preferred this criminal revision.

5. After hearing both sides and taking note of the admitted factual position that the petition property is admittedly exclusive property of the respondent herein namely, the father in law. In the above said decision, it has been held that :--

> If the aforesaid submission is accepted then it will mean that wherever the husband and wife lived together in the past that property becomes a shared household. It is quite possible that the husband and wife may have lived together in dozens of places e.g.with the husband's father, husband's paternal grandparents, his maternal, parents uncles, aunts, brothers, sisters, nephews, nieces etc. If the interpretation canvassed by the learned counsel for the respondent is accepted, all these houses of the husband's relative will be share households and the wife can well insist in living in the all these houses of her husband's relatives merely because she had stayed with her husband for some time in those houses in past. Such a view would lead to chaos and

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would be absurd.

As regards Section 17(1) of the Act, in our opinion the wife is only entitled to claim right to residence in a shared household and a share household would only mean the house belonging to or taken on rent by the husband or the house which belongs 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 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 ' share household'.

6. Hence, on the factual circumstances and admitted position and the law laid down by the Hon'ble Supreme Court in the above decision and to be followed by all the Courts India, I have no hesitation to come to the conclusion that the order passed by the learned Principal District Judge in Crl.A.No.02 of 2017 does not warrant any illegality or irregularity passed by the Court below and hence, does not called for any interference in this view of the matter.

7. Accordingly, this Criminal Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IX)

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Sub Assistant Registrar

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To
1. The Principal District and Sessions Judge, Perambalur
2. The Additional Mahila Judge, Perambalur

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