

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.707 of 2015
and
M.P.No.1 of 2015

S.Senthil

... Appellant

-vs-

Geetharani

... Respondent

Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act against the order in IA No. 46 of 2011 in OP NO.2991 of 10 on the file of the Principal Judge, Family Court at Chennai, dated 29.08.2013.

For Appellant : Mrs.K.M.Nalini Shree

For Respondent : Mr. S.Sadasharam

J U D G M E N T

[Judgment of the Court was delivered by R.SUBRAMANIAN,J.]

The challenge in this appeal is by the husband to the order of interim maintenance made in IA No.46 of 2011 directing him to pay a sum of Rs.12,000/- per month from 26.08.2010 till date of the disposal of the main petition in OP No.2991 of 2010 and a sum of Rs.10,000/- towards litigation expenses.

2. The respondent wife had filed OP No.2991 of 2010 seeking divorce on the ground of cruelty. The same is being resisted by the husband disputing the allegation of cruelty. Pending the said petition for divorce, the wife filed IA No. 46 of 2011 seeking interim maintenance at Rs.25,000/- per month and Rs.1,00,000/- towards litigation expenses. According to the wife, the husband's family is a very affluent family having a

Cinema Theatre by name Thailammai Theatre and the lodging house called Hotel Thailammai Inn in Thiruvarur town. Claiming that the husband is entitled to share in the income from the said businesses as well as vast tracts of agricultural land belonging to the family, the wife sought for maintenance as stated above.

3. The husband resisted the said petition, claiming that the business belongs to the larger joint family and his father is entitled to only 1/4th share in the said businesses as well as the agricultural lands. He would also contend that he has no independent income and he is actually employed on a monthly salary under his father. He would further claim that the wife is a post graduate in Sociology and he reliably learns that she is employed on a decent salary.

4. The Family Court which heard the Interlocutory application based on the documentary evidence filed in the form of Ex.P4, P5 and P9 which are registration copies of sale deeds standing in the name of the father of husband/appellant concluded that the family of the appellant is an affluent family and husband is, therefore, liable to pay maintenance at the rate of Rs.12,000/- per month. The Family Court also directed the husband to pay a sum of Rs.10,000/- towards litigation expenses. It is this order which is under challenge in this appeal.

5. We have heard Mrs.K.M.Nalini Shree learned counsel appearing for the appellant and Mr.S.Sadasharam learned counsel appearing for the respondent.

6. Mrs.Nalini Shree learned counsel for the appellant would vehemently contend that the Family Court was not right in assuming that the husband is receiving his share of the income from the properties of the father. She would further contend that in the absence of any documentary evidence to show that the husband is having sufficient income, the Family Court ought not to have directed payment of interim maintenance at Rs.12,000/- per month.

7. Per contra, Mr.S.Sadasharam learned counsel for the respondent wife would contend that the documents produced by the wife namely Ex.P1 which stands in the name of the father of the appellant, Ex.P2 is stands in the name of the appellant and his brothers, Ex.P3 which stands from the mother of the appellant, Ex.P4 which is a family arrangement between the father of the appellant and his brothers, Ex.P5 standing in the name of the mother of the appellant would show that the family is possessed of substantial properties apart from business houses. It is not in dispute that the appellant husband is living with his parents in a joint family. Pointing out that there is a female child

also, Mr.S.Sadasharam would contend that the interim maintenance awarded at Rs.12,000/- per month is just and reasonable.

8. We have heard the rival submissions. There is enough and more evidence to show that the family of the appellant husband is possessed of vast extent of agricultural lands and the business houses namely, the Cinema Theatre and the Lodging House. Though, the appellant husband would plead that he is employed on a monthly salary under his father, he has not chosen to produce any evidence to show such employment or the quantum of salary. The wife apart from maintaining herself has also to maintain the female child Deepthi Sivani.

9. We are, therefore, of the considered opinion that the Family Court was right in awarding a sum of Rs.12,000/- as interim maintenance and we do not see any reason to interfere with the said order of the Family Court. We, therefore, see no merit in the appeal and the appeal is, therefore, dismissed. However, in circumstances, there will be no order as to cost. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

kkn

To

The Principal District Judge,
Family Court,
Chennai.

+1cc to Mr.S.Sadasharam, Advocate Sr.66936
+1cc to Mr.K.M.Nalinishree, Advocate Sr.67034

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