

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2018

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Cr1.R.C.No.911 of 2011

and

M.P.No.1 of 2011

M.Nalathambi, M/67
S/o Mutahiyah Gounder,
M.Kunnathur post,
Ulundurpet Taluk,
Villuppuram District.

.. Petitioner

Vs.

1. Paanchaalai

2. Sundararaman

3. Dhineshwari

.. Respondents

(Respondents 2 and 3 are minors
and rep. by their Mother and
natural guardian, the 1st Respondent)

Prayer: Criminal Revision filed under Sections 397 and 401
of Cr.P.C., against the order passed in M.C.No.1 of 2007 dated
12.05.2011 by the Judicial Magistrate No.2, Ulundurpet,
Villuppuram District and set aside the same.

For Petitioner : Mr.T.Muruganantham

For Respondents : Mr.V.S.Siva Sundaram

ORDER

This criminal revision has been preferred seeking to
set aside the order dated 12.05.2011 passed in M.C.No.1 of 2007
by the Judicial Magistrate Court No.2, Ulundurpet, Villuppuram
District.

2 For the sake of convenience, the parties will be referred to by their name.

3 The brief facts leading to the filing of this criminal revision petition are as follows:

3.1 It is the case of Paanchaalai, the first respondent herein, that when she was very young, her marriage with her maternal uncle Veerasamy was solemnized. Since Veerasamy failed to live in the matrimonial home, the villagers severed the matrimonial ties and Paanchaalai was given in marriage to one Ganesan. Through Ganesan, Paanchaalai begot a son, named Hari Krishnan. On account of matrimonial discord, Ganesan also left Paanchaalai and the villagers held panchayat, in which, a muchalika (Ex-P2) was signed for dissolving the marriage.

3.2 While that being so, Nalathambi, the petitioner herein was married to one Yasodai and after her death, he married one Marimuthu and through her, he begot two sons and one daughter.

3.3 It is the case of Paanchaalai that after the death of Marimuthu, Nalathambi married Paanchaalai on 07.09.1990 and through him, she begot two children, Sundararaman and Dhineshwari. It is the further case of Paanchaalai that after marriage, Nalathambi deserted the family and did not pay any maintenance either to her or to her children born through him.

3.4 Therefore, Paanchaalai initiated proceedings in M.C.No.1 of 2007 under Section 125 Cr.P.C. before the Judicial Magistrate No.II, Ulundurpet, claiming maintenance of Rs.5,000/- for herself and for her two minor children. She claimed a modest maintenance of Rs.500/- each per month and expenses of Rs.5,000/-.

3.5 After receipt of summons, Nalathambi did not appear before the trial Court. Therefore, the trial Court set him ex parte and recorded the evidence of Paanchaalai.

3.6 The trial Court, by order dated 21.04.2008 in M.C.No.1 of 2007 directed Nalathambi to pay Rs.500/- each per month as maintenance and Rs.5,000/- towards one time expense.

3.7 Nalathambi filed an application under Section 126 Cr.P.C. for setting aside the ex parte order which was allowed by the trial Court. After it was allowed by the trial Court, Nalathambi filed his counter in the main petition.

3.8 At that juncture, Nalathambi filed miscellaneous petition in M.P.No.1 of 2011 for DNA profiling of the two children, viz., Sundararaman and Dhineshwari, on the allegation that he had not fathered them.

4 Under normal circumstances, the trial Court should have assigned a separate M.P.No., to the said petition. However, the trial Court dismissed the petition filed by Nalathambi on 12.05.2011, challenging which, Nalathambi is before this Court.

5 Heard Mr.T.Muruganantham, learned counsel appearing for Nalathambi/petitioner and Mr.V.S.Siva Sundaram, learned counsel appearing for Panchaalai/first respondent.

6 Mr.T.Muruganantham, learned counsel appearing for Nalathambi/petitioner submitted that Nalathambi has made out a very strong case for DNA profiling and the trial Court ought not to have dismissed his plea.

7 Per contra, Mr.V.S.Siva Sundaram, learned counsel appearing for Panchaalai/first respondent refuted the contentions putforth by the learned counsel for Nalathambi.

8 This Court gave its anxious consideration to the rival submissions.

9 On reading of the petition for maintenance filed by Paanchaalai, it is seen that she has candidly stated about her previous marriages and has not suppressed any fact. It is still common in the countryside to give in marriage a young girl to her maternal uncle and when the marriage fails, the family members and the villagers would dissolve the marriage by entering into a muchalika. Though the validity of such a divorce, unless evidence shows that it is within the custom of the community, may not stand legal scrutiny, yet, this Court cannot close its eyes to the prevalence of such practices in our villages. Paanchaalai has also not concealed the birth of Hari Krishnan through her second marriage with Ganesan and she has not claimed any maintenance for Hari Krishnan. Nalathambi has also not denied the fact that he was earlier married to Yasodha and Marimuthu.

10 That apart, even in the counter filed by Nalathambi in the main proceedings, he had not disputed the paternity of the two children viz., Sundararaman and Dhineshwari. He has also not cross-examined Paanchaalai on those lines. Therefore, the trial Court was right in holding that the present petition for DNA profiling is yet another attempt by Nalathambi to protract the proceedings.

11 In such view of the matter, this Court does not find any infirmity in the order dated 12.05.2011 passed by the trial Court warranting interference.

12 Resultantly, this criminal revision petition is dismissed. Consequently, connected miscellaneous petition is closed.

Before parting with the matter, this Court, places on record, its appreciation to the counsel for both the parties for placing all the facts before this Court.

nsd

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate,
Court No.II,
Ulundurpet,
Villupuram District.
2. - DO - Thro: The Chief Judicial Magistrate
Villupuram.

Copy to:-

The Section Officer,
Criminal Section,
High Court, Madras - 104.

+1cc to Mr.T.Muruganantham, Advocate, S.R.No.85942
+1cc to Mr.V.S.Sivasundaram, Advocate, S.R.No.85708

Cr1.R.C.No.911 of 2011

sv(CO)
kak(29/01/2019)

सत्यमेव जयते

WEB COPY