

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN
Crl.R.C.845 of 2013

T. Rajamani

...Petitioner

Vs.

S. Namasivayam

...Respondent

Prayer: This Criminal Revision filed under Section 397 and 401 of Code of Criminal Procedure to set aside the judgment passed by the learned Additional District Sessions Judge, Salem (Fast Track Court No.1, Salem) in Crl.R.P.No.82 of 2009 dated 24.05.2010 against the order passed in M.C.No.28 of 2005 on the file of the District Munsif cum Judicial Magistrate, Omalur dated 30.09.2009.

For Petitioners : Mr. SU. Srinivasan

For Respondent : M/s. Star Associates - No Appearance

ORDER

This Criminal Revision has been filed by the petitioner against the judgment passed by the learned Additional District Sessions Judge, Salem (Fast Track Court No.1, Salem) in Crl.R.P.No.82 of 2009 dated 24.05.2010 by setting aside the order dated 30.09.2009 passed by the District Munsif cum Judicial Magistrate, Omalur in M.C.No.28 of 2005.

2. The petitioner and the respondent herein are husband and wife. They got married on 24.11.1983 and subsequently they separated and both of them are living separately for the past 25 years.

3. The petitioner/wife had filed a petition in M.C. No.28 of 2005 before the District Munsif cum Judicial Magistrate, Omalur seeking Rs.3000/- per month as maintenance from her husband for her day to day expenditure. After detailed enquiry, the learned District Munsif cum Judicial Magistrate, Omalur, allowed the petition by an order dated 30.09.2009 directing the respondent/husband to pay a sum of Rs.1250/- per month to the petitioner/wife towards monthly maintenance. Against which the respondent/husband filed a revision petition in Crl.R.P.No.82 of 2009 before the learned Additional District Sessions Judge,

Salem (Fast Track Court No.1, Salem). After hearing both sides, the learned Additional District Sessions Judge, Salem (Fast Track Court No.1, Salem) set aside the order passed by the District Munsif cum Judicial Magistrate, Omalur, by an order dated 24.05.2010.

4. As against the order dated 24.05.2010, the petitioner/wife has preferred this criminal revision before this Court.

5. The learned Counsel for the petitioner/wife submitted that during cross examination the respondent/husband had admitted the fact that he was working as a teacher and retired as Head Master and he was getting a sum of Rs.6000/- per month as pension. Therefore, considering the admission made by the respondent/husband, the learned Magistrate had passed an order to pay a sum of Rs.1250/- per month to the petitioner/wife as maintenance. Further, he submitted that the learned Additional District Sessions Judge, Salem (FTC No.1, Salem) has failed to consider the admission made by the respondent/husband.

6. When the matter is called, there is no representation for the respondent. Heard the learned counsel for the petitioner and perused the materials available on record.

7. The respondent deserted the petitioner without any valid reason and during cross examination, he himself admitted that he was working as teacher and retired as Head Master and was getting a sum of Rs.6000/- per month as pension. The Magistrate considered the admission made by the respondent and also the respondent deserted the petitioner without any valid reason, had passed an order to pay a sum of Rs.1,250/- to the petitioner as maintenance. The learned Additional District Sessions Judge, Salem (FTC No.1, Salem) without any reason, set aside the order passed by the Magistrate, which is not acceptable and the same warrants interference.

8. Since, the respondent admitted himself that he is getting Rs.6000/- per month as pension, the Magistrate had rightly come to the conclusion of awarding only Rs.1250/- per month to the petitioner as maintenance, whereas, the learned Additional District Sessions Judge, Salem (FTC No.1, Salem) without appreciating the evidence given by the respondent/husband erroneously set aside the order passed by the learned District Munsif cum Judicial Magistrate, Omalur.

9. In the result, the criminal revision is allowed. The order dated 24.05.2010 passed by the learned Additional District Sessions Judge, Salem (FTC No.1, Salem) is hereby set aside and the order dated 30.09.2009 made in M.C.No.28 of 2005 by the learned District Munsif cum Judicial Magistrate, Omalur, is

hereby restored. The respondent/husband is directed to comply with the order dated 30.09.2009 made in M.C.No.28 of 2005, forthwith.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

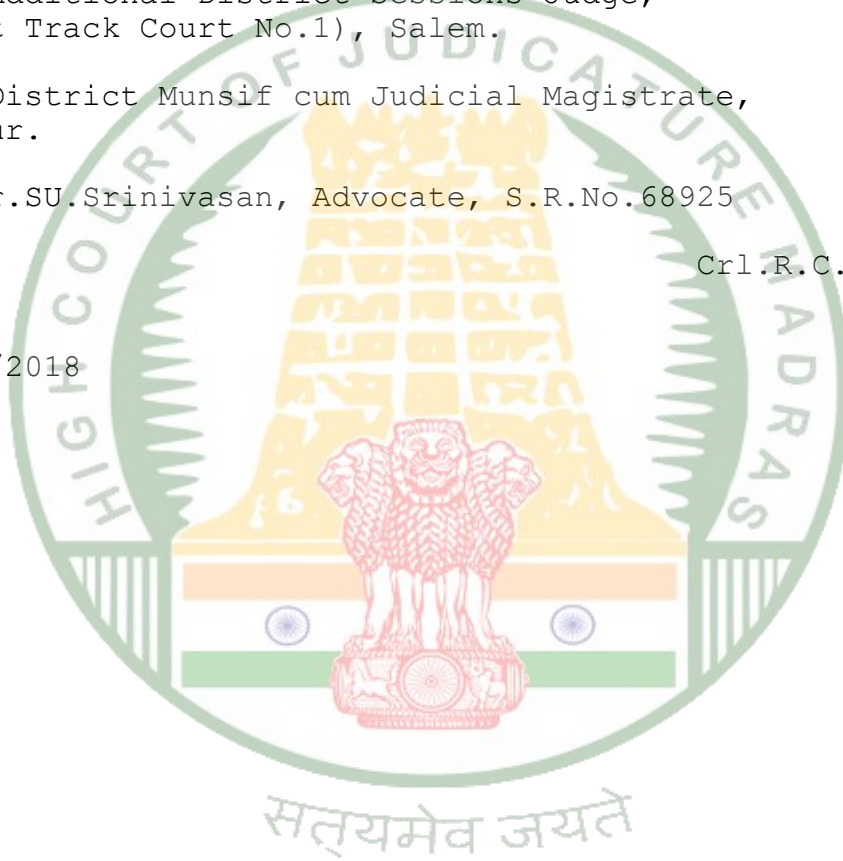
1. The Additional District Sessions Judge,
(Fast Track Court No.1), Salem.
2. The District Munsif cum Judicial Magistrate,
Omalur.

+1cc to Mr.SU.Srinivasan, Advocate, S.R.No.68925

Cr1.R.C.845 of 2013

RK(CO)

rrs 01/11/2018



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