

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on :11.07.2018

Orders Pronounced on:24.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.642 of 2015

and

M.P.No.1 of 2015

Swaminathan ...Petitioner/Respondent

Vs.

Eswari ...Respondent/Petitioner

PRAYER: Petition filed under Section 397 read with 401 of the Criminal Procedure Code, to set aside the order dated 09.02.2015 passed in the F.C.M.C.No.14 of 2014 on the file of the Family Court, Dharmapuri.

For Petitioner : Mr.Durai Gunasekaran

For Respondent : Mr.A.Sakthivel

O R D E R

The petitioner is the husband herein.

2. Challenging the order of maintenance passed in F.C.M.C.No.14 of 2014, the petitioner-husband has filed this criminal revision.

3. Originally, the petitioner has filed the petition before the learned Chief Judicial Magistrate, Dharmapuri in M.C.No.14 of 2014 subsequently, transferred to the Family Court. The respondent-wife has filing in M.C. Claiming maintenance on the ground that the marriage between the parties were solemnized on 26.01.1983 and out of the wedlock, the son by name of Palanisamy, and daughter by name Sridevi were born and subsequently, the revision petitioner herein has abounded the family and sought the maintenance.

4. The revision petitioner as a respondent before the Family Court filed a counter stating that they have been separated 16 years ago and he has suffered heart disease and last 16 years, the wife and the children are following the Christianity and hence, they are not entitled for maintenance. Besides, he got a mother to look after and hence, sought for the dismissal of the maintenance.

5. Before the Magistrate Court, P.Ws.1 to P.W3 were examined and marked as Exhibits P1 to P4 and D.W.1 to D.W.5 were examined and marked as D.Ws.1 to D.W.4

6. On consideration of both oral and documentary evidence, the Family Court has arrived that as per the pay slip for the February 2013, the date of filing of the application, his net salary after deduction is found to be Rs.16308/- and accordingly, the Family Court, Dharmapuri has arrived at that he has to pay a sum of Rs.4,500/- per mensem and Rs.12,000/- towards the maintenance of medical expenses and also awarded cost of Rs.5,000/-.

6. Heard both sides and perused the records.

7. Before the trial Court, the revision petitioner has projected that he has re-married another person and also got children through her second marriage according to them there was a village panchayat and in said village panchayat, the marriage between petitioner and respondent was dissolved and a lumpsum Rs.4,25,000/- has been paid to wife and hence, he has not liable to make any maintenance amount. However, no clear and cogent evidence in support of the said alleged dissolution of marriage and payment of lumpsum, one time settlement as a permanent alimony is not proved in the manner known to law. Though, the respondent herein was examined P.W.1, the trial Court has concluded that there is no positive evidence in respect of the alleged dissolution of marriage and permanent payment of alimony and awarded the compensation.

8 . Based upon the salary certificate, the petitioner appears to have been allowed and quantum is arrived accordingly as Rs.4,50,000/-. Taking note of the family situation and also the fact that the husband has look after the age old mother and is also he is now retired, I am of the considered view that the amount of Rs.4,500/- on the higher side on the circumstances of the case and the same is hereby reduced to Rs.3,000/- so also, for the annual maintenance and medical expenses which has been awarded Rs.12,000/- by the trial Court is also modified as Rs.9,000/-, the cost awarded by the trial Court is modified as that of the Rs.1000/- and accordingly, this Civil Revision Petition is disposed of and the award of maintenance shall stand modify to that limited extent. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar

To

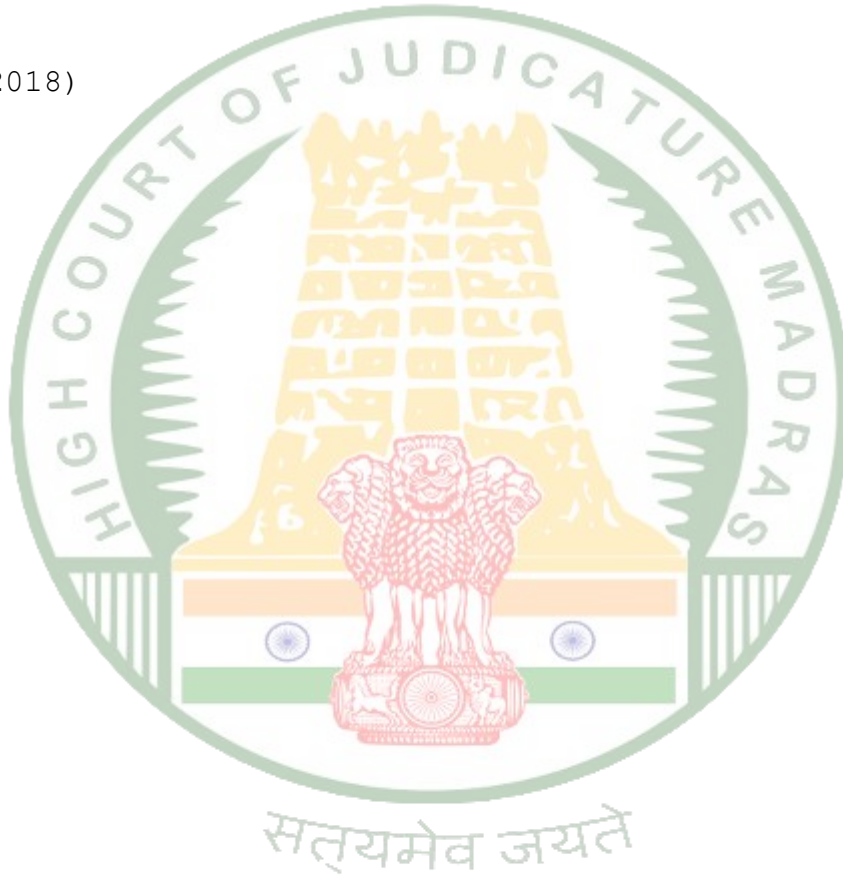
The Judge, the Family Court, Dharmapuri.

+ 1 ccto Mr. Durai Gunasekaran, Advocate Sr.50193

+ 1 cc to Mr.A. Sakthivel, Advocate Sr.49312

Crl.R.C.No.642 of 2015 and
M.P.No.1 of 2015

RJ(CO)
EU(11/08/2018)



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