

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2018

CORAM

THE HON'BLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.768 of 2015
& M.P.No.1 of 2015

M.Palanisamy

.. Petitioner

Vs.

P.Padmini

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the judgment and decree of the learned I Additional District Judge, Coimbatore dated 10.06.2014 made in C.M.A.No.47 of 2013 against the fair and decretal order dated 01.10.2013 made in I.A.No.134 of 2012 in O.S.No.416 of 2012 on the file of the III Additional Sub-ordinate Judge, Coimbatore.

For Petitioner : Mr.S.K.Kadarkarai

For Respondent : Mr.Pradeep
for Mr.P.Saravana Sowmiyan

ORDER

This Civil Revision Petition is filed to set aside the judgment and decree dated 10.06.2014 made by the learned I Additional District Judge, Coimbatore in C.M.A.No.47 of 2013 against the fair and decretal order dated 01.10.2013 made in I.A.No.134 of 2012 in

O.S.No.416 of 2012 on the file of the III Additional Sub-ordinate Judge, Coimbatore.

2.The petitioner / husband is the defendant and respondent / wife is the plaintiff in O.S.No.416 of 2012 on the file of the III Additional Subordinate Judge, Coimbatore. The respondent filed the said suit against the petitioner for a direction to the petitioner to pay a sum of Rs.7,500/- as monthly maintenance and to create a charge over the suit schedule property for the due payment of maintenance, partition and for permanent injunction restraining the petitioner from alienating the respondent's ½ share of the suit properties.

3.The respondent filed I.A.No.134 of 2012 under Section 151 of C.P.C for a direction to the petitioner to pay Rs.7,500/- per month as interim maintenance to the respondent till the disposal of the suit. According to the respondent, the petitioner is a building contractor and doing real estate business and is earning Rs.60,000/- per month. The petitioner is not maintaining the family. The respondent with great difficulty is maintaining herself. She is not having any independent income. In addition she made various allegations against the petitioner.

4.The petitioner filed counter affidavit denying all the allegations and in turn made various allegations against the respondent. The petitioner denied that he is doing real estate business and is earning Rs.60,000/-. According to the petitioner, he studied only up to 8th standard. The respondent is a post graduate and she is taking tuition and doing tailoring business and earning Rs.10,000/- per month and denied that the respondent has no source of income. The petitioner is maintaining minor daughter Harini and meeting out all her expenses towards education and other expenses. The petitioner has settled a property in favour of the respondent by settlement deed dated 31.08.1999 out of love and affection. The respondent sold the said property and is having the sale consideration.

5.Before the learned Judge, the respondent did not let in any oral and documentary evidence. The petitioner marked 14 documents as Exs.R1 to R14 and did not let in any oral evidence.

6.The learned Judge considering the averments in the affidavit and counter affidavit, ordered a sum of Rs.4000/- to be paid to the respondent by the petitioner as interim maintenance, till the disposal of the suit.

7. Against the said order dated 01.10.2013, made in I.A.No.134 of 2012 in O.S.No.416 of 2012, the petitioner filed C.M.A.No.47 of 2013 on the file of the I Additional District Judge, Coimbatore and the same was dismissed, confirming the order of the learned III Additional Sub-ordinate Judge.

8. Against the said judgment of dismissal dated 10.06.2014 made in C.M.A.No.47 of 2013, confirming the order dated 01.10.2013 made in I.A.No.134 of 2012 in O.S.No.416 of 2012, the present Civil Revision Petition is filed by the petitioner.

9. Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record.

10. From the materials on record, it is seen that both the petitioner and respondent have not produced any documents to show their income. The petitioner denied that he is doing real estate business and is earning Rs.30,000/- per month. On the other hand, the respondent has not denied that she is taking tuition and doing tailoring business and is earning Rs.10,000/- per month. The respondent has not let in any evidence to deny that she is taking

tuition and doing tailoring business and getting Rs.10,000/- per month. Considering all the above facts and all the other records, I hold that order of the trial Judge as well as the judgment of the learned Appellate Judge are to be modified, granting Rs.2,500/- as interim maintenance to the respondent as it is the duty of the petitioner to maintain his wife. Also the Court is to take into consideration the income of the respondent/wife if she is earning.

11. With the above modification, this Civil Revision Petition is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed. The suit is of the year 2012. The learned Trial Judge is directed to dispose of the suit as expeditiously as possible in any event not later than three months from the date of receipt of a copy of this order.

सत्यमेव जयते

05.01.2018

gsa

Index::Yes/No

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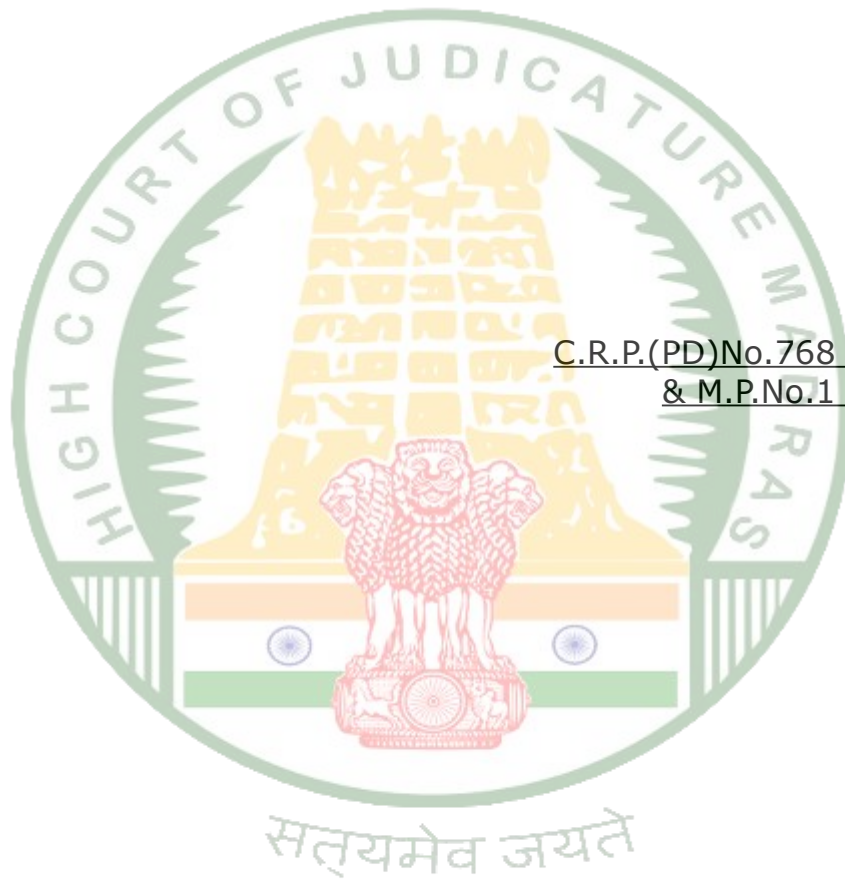
To

1. The I Additional District Judge,
Coimbatore.

2. The III Additional Sub-ordinate Judge,
Coimbatore.

V.M.VELUMANI,J.

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