



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:16.08.2018

WEB COPY

Coram:

The Honourable Mr.Justice P.Velmurugan

Crl.R.C.No.45 of 2013

Sudevamma

.. Petitioner

/versus/

Ramareddy

.. Respondent

Criminal Revision Case is filed under Sections 397 and 401 of Criminal Procedure Code against the order dismissing the petition filed by her seeking maintenance under Section 125 of Cr.P.C., in M.C.No.7 of 2002 on the file of the Judicial Magistrate, Denkanikottai dated 07.10.2011.

For Petitioner :Mr.K.Thiruvengadam
For Respondent :Mr.P.Subba Reddy

O R D E R

Criminal Revision Case is filed against the order dismissing the petition filed by the petitioner seeking maintenance under Section 125 of Cr.P.C., in M.C.No.7 of 2002 on the file of the Judicial Magistrate, Denkanikottai dated 07.10.2011.

2. The wife has filed a petition in M.C.No.7 of 2002 under Section 125 of the Criminal Procedure Code against the husband before the District Munsif-cum-Judicial Magistrate, Denkanikottai for maintenance of Rs.3,000/- per month. The Magistrate, after hearing both the sides, dismissed the petition filed by the wife. Against the order passed by the Magistrate, the wife has preferred the present revision.

3. The learned counsel appearing for the petitioner/wife would submit that the marriage between the petitioner and the respondent is admitted. The trial Court has stated that the petitioner is the second wife of the respondent and she got the property and she had means to maintain herself and dismissed the application. According to the learned counsel for the petitioner, though the wife is having any means to maintain herself, the husband is liable to maintain the second wife, therefore, the



impugned order passed by the Magistrate warrants interference.

4. The learned counsel appearing for the respondent would submit that there is a dispute with reference to the marriage between the petitioner and the respondent. But the petitioner is in possession of ancestral property of the respondent and also she sold some portion of the property to the third party. In order to prove the same, the respondent filed the certified copy of the sale deed executed by the petitioner to the third party, which was marked as Ex.R1. The said fact was denied by the revision petitioner. Even after selling the portion of the property, still she is in possession of the remaining portion of the property of the respondent and she is cultivating the land and also getting income from the land. Since she is having sufficient means to maintain herself and also she is in possession of the ancestral property of the respondent, the respondent is not entitled to maintain the petitioner. The Magistrate had elaborately gone into the facts and dismissed the petition. Therefore, according to the learned counsel for the respondent, the impugned order does not warrant any interference from this Court.

5. Heard the learned counsel appearing on either side and perused the records.

6. A perusal of the records, it is seen that the Marriage between the petitioner and the respondent is not in dispute. Admittedly, the petitioner is the second wife of the respondent. Even the second wife is also entitled for maintenance, if she is unable to maintain herself. In the instant case, it is the main contention of the respondent that the petitioner/wife is in possession of the property which belongs to the respondent and the said property is the ancestral property of the respondent. Further, the petitioner/wife sold a portion of the property to the third party and in order to prove the same, the respondent filed the certified copy of the sale deed executed in favour of the third party which is marked as Ex.R1.

7. The learned counsel for the respondent submitted that by showing the respondent as a dead person, the petitioner/wife has sold the property to the third party. Therefore, the Magistrate found that she is having sufficient means to maintain herself. The petitioner has let out a portion of the property and is receiving the rent amount. But, the respondent is a retired teacher and receiving a sum of Rs.10,000/- per month as pension. Further, the respondent is a diabetic patient and suffering from blood pressure and he is spending more than a sum of Rs.4,000/- for medical expenses per month.



8. Now, the only question to be decided is as to whether the petitioner is having income to maintain herself or not. The vendee of the petitioner has been examined as PW-3. The vendee of the petitioner is none other than the elder brother of the respondent. PW-3 who is the vendee of the revision petitioner as well as the elder brother of the respondent, has deposed that the ancestral property of the respondent is nearly 20 acres and the petitioner has been in possession and enjoyment of the share of the respondent by cultivating ragi and maize. During the cross examination, PW-1 admitted that for the past 20 years the petitioner and her son has been in possession of the share of the ancestral properties of the respondent. Further, the evidence of PW-3, the vendee of the petitioner, shows that even after selling a portion of the property, the petitioner and her son are cultivating the land of the respondent.

9. Considering the oral and documentary evidence, the Court below has rightly dismissed the petition filed by the petitioner for maintenance. There is no merit in the revision petition. This revision petition is liable to be dismissed.

8. Accordingly, this Criminal Revision Case is dismissed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate, Denkanikottai.

2.The Chief Judicial Magistrate,
Krishnagiri(for information)

+1cc to Mr.P.Subba Reddy, Advocate, S.R.No.56556

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GJII(CO)
GSP(02/11/2018)