

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.07.2018

Delivered on : 27.08.2018

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

C.R.P. (NPD) .No.976 of 2006

and

M.P.No.1 of 2006

1.Tamilarasu
2.Thambana gounder
3.Krishnamoorthy

... Petitioners

Vs

Sumathi

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Constitution of India against the fair and decreetal order passed in E.P.No.164 of 2005 in O.S.No.639 of 1996 dated 03-03-2006 on the file of the learned I Additional Subordinate Judge, Erode.

For Petitioners : Mr.C.Prakasam

For Respondent : Mr.K.Subburam

ORDER

The above Civil Revision Petition has been filed by the Judgment Debtor challenging the order dated 03.03.2006 in E.P.No.164 of 2005 in O.S.No.639 of 1996 on the file of the learned I Additional Subordinate Judge, Erode.

2.The brief resume of the facts is necessary to put the issue in perspective:

The respondent herein had filed O.S.No.639 of 1996 for the following reliefs:

- (1)directing the 1st defendant to pay the plaintiff Rs.2,500/- per month from 10.11.1994 till her life time towards her maintenance;
- (2)directing the 1st respondent to pay the plaintiff Rs.41,250/- towards her past maintenance with interest thereon at 18% per annum from 23.06.1993 until payment in full;
- (3)directing the defendants 1 to 3 to pay the plaintiff Rs.1,85,000/- with interest thereon at 18% per annum from the date of suit until payment in full;

- (4) Creating a charge over the undermentioned properties for the due payment of the decree amount; and
(5) directing the defendants 1 to 3 to pay the costs of the suit."

3. The plaintiff had submitted that she had married the 1st respondent on 06.03.1992 and right from the beginning she was subjected to torture and ill treatment by the respondents namely her husband, her father-in-law, the 1st petitioner herein, her mother-in-law and her brother-in-law, the 3rd petitioner herein. She contended that at the time of marriage, her father had provided her with money and jewelery in keeping with their status as a middle class agricultural family. She was given jewelery weighing 30 sovereigns and silk sarees and other furniture apart from cash. On 20.06.1993, the respondent was beaten and driven out of her matrimonial home. She had immediately lodged a dowry harassment case. She also comes to learn that the 1st petitioner herein has remarried one Latha and in order to preempt the respondent herein from proceeding with the criminal action, the 1st respondent and his family members had pretended to settle the matter. But, ultimately they were ready to offer only a pittance leaving the petitioner with no other remedy except to file the above suit for reliefs stated therein.

4. The 1st respondent had filed a written statement which was adopted by the petitioners 2 and 3 in which he had denied the contentions raised by the respondent and had also come forward with the case that the respondent was already in a relationship with an other person and was not inclined to continue her matrimonial life. The 1st petitioner had contended that the marriage had not been consummated and the respondent had returned to her family on her own volition. He had also contended that he had filed proceedings for divorce in HMOP No.92 of 1994. He denied his liability to maintain the respondents stating that the respondent is owning 12 acres of agricultural land apart from 2 acres of land that she had inherited from her maternal grandmother and the lands being fertile lands, the respondent was possessed of sufficient funds and income to maintain herself.

5. The learned Principal Subordinate Judge, Erode, by Judgment and Decree dated 01.09.1999 decreed the suit filed by the respondent by directing the 1st petitioner to pay a sum of Rs.750/- per month towards her maintenance from 10.11.1994 and to pay a sum of Rs.12,375/- towards part maintenance from 23.06.1993 till 09.11.1994 and also, to pay a sum of Rs.50,000/- which was given in Cash by the respondent. A charge was also created over the properties of the respondent for the aforesaid sum. This Judgment and Decree was taken up on appeal by the

petitioners in A.S.No.41 of 2001 and by a Judgment and Decree dated 12.06.2001, the first appeal was also dismissed.

6.Since the petitioners did not come forward to pay the maintenance, the respondent herein had filed E.P.No.164 of 2005 on the file of the learned I Additional Sub Judge, Erode to bring the properties for sale. The petitioners herein had entered appearance in the execution proceedings and contested the same and that the said E.P. was posted for orders on 03.03.2006. On 01.03.2006, the petitioners herein came forward with the application to re-open the case as they wanted to produce some documents.

7.The petitioners had also filed a counter in the execution petition stating that when the first appeal was pending, the respondent herein had remarried and on 01.04.2001, she was blessed with the son and suppressing this fact, the respondent has come forward with the present execution petition. Therefore, the execution petition deserves to be dismissed.

8.Heard Mr.C.Prakasam, learned counsel appearing for the petitioners and Mr.R.Subburam, learned counsel appearing for the respondent and perused the material on record.

9.The learned counsel appearing for the petitioners would argue that on remarriage the petitioner lost her right to claim maintenance and therefore, the execution petition has to be dismissed.

10.Per contra, the learned counsel appearing for the respondent would contend that even assuming without admitting that the petitioner's contention about the respondent's remarriage was correct, the petitioners are liable to pay maintenance to the respondent from 09.11.1994 which payment they have failed to make and therefore, the order passed by the learned I Additional Subordinate Judge, Erode, is correct and needs no re-consideration.

11.From a perusal of the records, it is seen that the learned Principal Sub Judge, Erode had passed a Decree on 01.09.1999 directing the petitioners to deposit the maintenance amount of Rs.750/- per month totaling Rs.12,375/- for the period from 23.06.1993 to 09.11.1994 and thereafter, a sum of Rs.750/- per month from 10.11.1994 till the life time of the respondent. Apart from this, the petitioners herein were directed to repay the sum of Rs.50,000/- given to them initially. None of these amounts have been paid or deposited by the petitioners to date. Further, the petitioner who came forward with the case that the respondent had remarried and delivered a boy baby, has not let in any evidence to prove the said contentions and therefore, it is only the ipsi dixit of the petitioner that is available.

12.Having suffered a Decree which has been confirmed in appeal, the petitioners cannot prevent the Decree holder from enjoying the fruits of the Decree. The petitioners have not made out any case for interfering with the order of the learned I Additional Subordinate Judge, Erode in E.P.No.164 of 2005.

In the result, this Civil Revision Petition is dismissed. The order of the learned I Additional Subordinate Judge, Erode, in E.P.No.164 of 2005 in O.S.No.639 of 1996 dated 03-03-2006, is confirmed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

mps

To

The I Additional Subordinate Judge,
Erode.

+1cc to Mr.K.Subburam, Advocate, S.R.No.58574

+1cc to Mr.C.Prakasam, Advocate, S.R.No.58897.

C.R.P. (NPD) .No.976 of 2006

GMR (CO)

rrs 17/09/2018

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