

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 06.12.2018

CORAM:
THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CrI.O.P.No.11265 of 2017
and
CrI.M.P.No.7408 of 2017

S.Prabhakaran

... Petitioner

Vs.

S.Padma

... Respondent

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for records in D.V.C.No.4 of 2017 pending on file of the Judicial Magistrate at Thiruvotriyur, Chennai.

For Petitioner : Mr.N.Paul Sunder Singh

For Respondent : Mr.R.Arunkumar

ORDER

This petition has been filed seeking to quash the proceedings in D.V.C.No.4 of 2017, pending on the file of the Judicial Magistrate at Thiruvotriyur, Chennai.

2. The petitioner's father namely Mr.Selvam was married to one woman namely Mrs.Uma in the year 1999 and the petitioner was born to them on 19.09.1990. The petitioner's mother died on 20.10.1992. Thereafter, above said Selvam married the respondent. The father of the petitioner Selvam died on 29.08.2011.

3. The property in question originally belongs to the petitioner's grand-mother Mrs.A.Muruvammal. This property was settled by her in favour of the petitioner by virtue of registered settlement deed dated 15.04.2016.

4. The respondent has filed a petition under the Domestic Violence Act by claiming the following reliefs:-

"a) For grant of Permanent Injunction restraining the respondent their men, Agents, servants or any other person claiming through or under him from any manner interfering with the peaceful possession and enjoyment of the petitioner in petition schedule property and morefully described in the schedule to the petition.

b) For grant permanent injunction restraining the respondent or any other person acting on their behalf from encumbering alienation before the S.R.O. Thiruvotriyur, Chennai-19 in petition schedule property in any manner and morefully described in the schedule to the petition."

5. The learned counsel for the petitioner would submit that the respondent cannot claim the above said relief, since the petitioner's father namely Mr.Selvam was not the owner of the property. The learned counsel would further submit that the wife will be entitled for a share house-hold only if the property belongs to the husband. In this case, admittedly, the property belongs to the grand-mother of the petitioner, which was subsequently settled in favour of this petitioner and the above said Selvam was not a owner of the property at any point of time.

6. The learned counsel for the petitioner in order to substantiate his submissions placed reliance on the judgment of the Hon'ble Supreme Court in (2007) 3 Supreme Court Cases 169 reported in S.R.Batra and another Vs Taruna Batra (SMT) and also 2015 (3) MWN (Cr.) 139 in V.P.Auradha Vs S.Sugantha @ Suganthi.

7. The learned counsel for the respondent would submit that the respondent was married to the above said Selvam and the said Selvam had died in the year 2011. Subsequent to the death of said Selvam, the petitioner is entitled to reside in the property and she has right of shared house-hold in the property.

8. The learned counsel for the respondent would further submit that the respondent cannot be evicted illegally from the property and she is entitled for protection under the Act.

9. This Court has carefully considered the submissions made on either side.

10. The fact remain that one Muruvammal was the absolute owner of the property and she had settled the property in favour of the petitioner and thereby the petitioner became the owner of the property. The respondent can claim share house-hold property only if the property belongs to the husband. Admittedly, in this case, the property does not belong to the husband. Therefore, the petitioner will not be entitled for the relief as sought for in the petition.

11.The facts of this case is squarely covered by the judgments referred supra, wherein it was consistently held that a wife can claim her right under Section 17 (i) of the Domestic Violence Act for residing only in house-hold property, which means the house belonging to the husband. If

the house does not belong to the husband, the wife cannot seek for the relief of a share in house-hold property. In this case, the relief sought for by the petitioner cannot be granted, in view of the position of law and the judgments referred supra.

12. In the result, the proceedings in D.V.C.No.4 of 2017 pending on file of the learned Judicial Magistrate at Thiruvotriyur, Chennai is hereby quashed.

13. Accordingly, this criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

dss

To

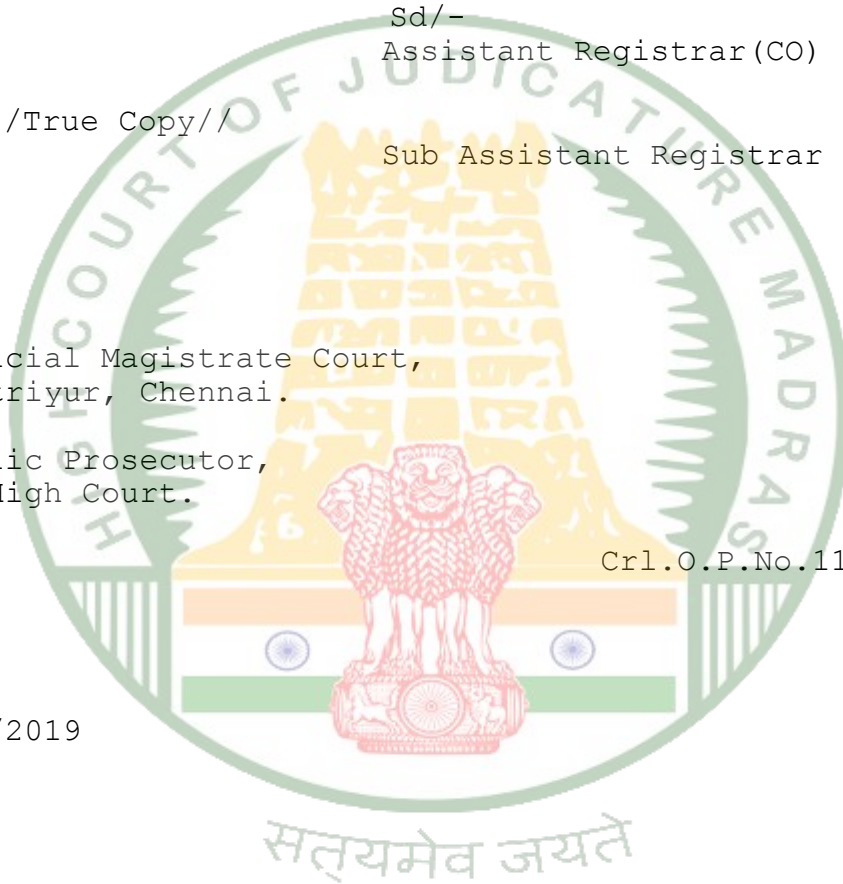
1.The Judicial Magistrate Court,
Thiruvotriyur, Chennai.

2.The Public Prosecutor,
Madras High Court.

Crl.O.P.No.11265 of 2017

RK(CO)

rrs 03/01/2019



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