



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 19.09.2018

CORAM
THE HON'BLE DR.JUSTICE G.JAYACHANDRAN
Crl.R.C(MD).No.118 of 2018
and
Crl.M.P.(MD).No.1504 of 2018

Thaasan .. Petitioner/Respondent/Petitioner/
Respondent
-Vs-

Tamilarasi .. Respondent/Petitioner/Respondent/
Petitioner

Prayer : Criminal Revision Case filed under Section 397 (1) r/w 401 of the Code of Criminal Procedure, against the Judgment and Sentence dated 16.12.2017 in C.A.No.55 of 2017 on the file of the III-Additional District and Sessions Judge, Tirunelveli by setting aside the order passed in Crl.M.P.No.910 of 2017 dated 02.06.2017 on the file of the learned Judicial Magistrate, Valliyoor.

For Petitioner : Mr.R.Maheswaran

For Respondent : Mr.S.Malaikani

ORDER

Heard the learned counsel for the petitioner, who is the father-in-law of the respondent. The short point involved in this case is, the property, which is now the subject matter of the interim order passed by the learned Magistrate for share hold residence in favour of the respondent herein, is disputed by the petitioner herein.

2. According to the petitioner, the said residential premises is his exclusive property. It is neither the property of his son nor joint family property, in which the son have a share in it. Therefore, the respondent, who is the wife of his son cannot claim shared residential right under the Protection of Women from Domestic Violence Act, 2005. It is also contended by the learned counsel for the revision petitioner that at no point of time, the respondent and her husband lived in the house in dispute, except for a short period of 10 days immediately after their marriage. Thereafter, they left to Chennai for their livelihood and never returned back.

3. The above said contention of the petitioner was accepted by the trial Court in Crl.M.P.No.910 of 2017 on 02.06.2017. Aggrieved by that, the respondent herein preferred C.A.No.55 of 2017 before the III-Additional District and Sessions Judge, Tirunelveli.



The said appeal was allowed by setting aside the order passed by the learned Judicial Magistrate. It is brought to the notice of this Court that in the earlier round of litigation both the parties has agreed to decide their dispute regarding the right of shared house along with DVOP and wait till the final disposal of D.V.O.P.No.16 of 2014 and will not insist upon the enforcement of the interim order regarding the residential relief.

4. While so, the revision petitioner herein had approached the learned Judicial Magistrate by way of Crl.M.P.No.910 of 2017 apprehending disturbance of his peaceful possession by the respondent which has now landed up in filing the present revision petition.

5. Relying upon the judgment of the Hon'ble Supreme Court rendered in *S.R.Batra and another vs. Taruna Batra* reported in (2007) 3 SCC 169, the revision petitioner would contend that Section 19 of the Protection of Women from Domestic Violence Act, 2005, defines the shared household as, where the spouse lived together and in which the husband is the absolute owner or rented the premises or have some share in it. As far as the present property is concerned according to the revision petitioner, the property does not fall under any of these category.

6. When the parties have agreed in the earlier round of litigation that they will not agitate about the nature of the residential property, which is under dispute based on the interim order, but they will wait for the final disposal of D.V.O.P.No.16 of 2014 where they will place their respective cases and documents in support of their case. Whiles, there is no necessity either for the respondent herein to go and disturb the possession of the petitioner or the petitioner to establish his right excluding the claim of the respondent regarding her shared house residential protection.

7. It is for the trial Court to consider in the D.V.O.P.No.16 of 2014 about the claim and decide upon the rival claim regarding the title and enjoyment of the property. Till then, the respondent herein shall not disturb the peaceful possession of the petitioner in the said house. At the same time, till the disposal of D.V.O.P.No.16 of 2014, the revision petitioner shall not alienate or create charge over the property.

8. With these direction, the revision petition is disposed of. Consequently, connected miscellaneous petition is closed. The trial Court is directed to hear the parties and dispose of D.V.O.P.No.16 of 2014 within a period of four months from today, on merits and in accordance with law.

Sd/

Assistant Registrar (Records)

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Sub Assistant Registrar(CS-IV)



TO

THE JUDICIAL MAGISTRATE, VALLIYOOR

+1cc to Mr.R.Maheswaran, Advocate, SR.No. 85489

+1cc to Mr.S.Malaikani, Advocate, SR.No.85502

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