



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.08.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRP (MD)No.194 of 2016 (PD)

and

CMP(MD)No.850 of 2016

Nambi

... Petitioner/Respondent/Petitioner
Vs.

Muthu Lakshmi

... Respondent/Petitioner/ Respondent

Prayer : This Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records relating to the order dated 16.10.2015 made in I.A No.101 of 2013 in H.M.O.P No.71 of 2012 on the file of the learned Sub-ordinate Judge Court, Valliyoor, Tirunelveli District and set side the same insofar as the award amount granted to the minor son of the respondent and the award amount of Rs.10,000/- to meet the expenses of conducting the case.

For Petitioner

: Mr.S.R.Anbarasu

For Respondent

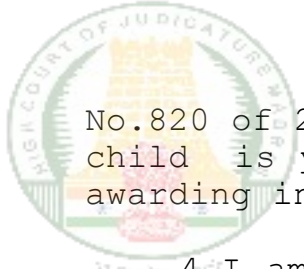
: Mr.S.Malaikani

ORDER

The revision petitioner got married to the respondent on 13.11.2011. The relationship between the parties appears to have come under strain. Therefore, the revision petitioner filed HMOP.No.71 of 2012 on the file of the Sub Court, Valliyoor for dissolving the said marriage. The respondent herein filed I.A No.101 of 2013 claiming interim maintenance for her and for the minor child by name Balasankar. He was born on 15.08.2012. The revision petitioner herein pointed out that the respondent herein is working as a Police Constable and that she is earning more than him. He also denied the very paternity of the child. The court below while negating the wife's plea for interim maintenance, directed the revision petitioner to pay a sum of Rs.3,000/- as interim maintenance for the child and Rs.10,000/- towards the expense for conducting the case. The said order is questioned in this civil revision petition.

2.Heard the learned counsel on either side.

3.The learned counsel appearing for the revision petitioner pointed out that the very paternity of the child is under challenge. The revision petitioner taken out an application for conducting DNA test. The said petition was however dismissed. Questioning the correctness of the said order, he filed CRP(MD)



No.820 of 2018. In these circumstances, when the paternity of the child is yet to be disproved, he contended that the question of awarding interim maintenance will not arise.

4.I am unable to agree with the said submission of the learned counsel for the revision petitioner. Admittedly, the child was born to the respondent during the subsistence of the marital relationship between the petitioner and the respondent. Therefore, presumption under Section 112 of the Indian Evidence Act, 1872 will definitely come into play. In any event, as on date of the passing of this order, the DNA test had not been conducted. The paternity of the child has not been disproved. Therefore, this Court is of the view that the court below was right in partly allowing I.A No.101 of 2013.

5.There is no merit in this civil revision petition. It stands dismissed. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar(CS-I)

To
The Subordinate Judge,
The Subordinate Court,
Valliyoar, Tirunelveli District.

+1CC to Mr.S.Malaikani, Advocate, SR.No.80314

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SKM
ES/SKN/RSK/SAR 1/20.09.2018/2P/3C