

THE HON'BLE SRI JUSTICE P.KESHA RAO

CRIMINAL REVISION CASE No.2112 OF 2011

ORDER:

Heard the learned counsel for the petitioner as well as second respondent.

The present Criminal Revision Case is filed questioning the judgment passed in CrI.A.No.158 of 2011, dated 09.06.2011 on the file of the Principal Sessions Judge, East Godavari District at Rajahmundry in setting aside the orders passed in D.V.C.No.1 of 2009, dated 30.11.2010 on the file of the Court of Judicial First Class Magistrate, Alamuru granting a sum of Rs.1,000/- per month to the second respondent towards maintenance which shall be enforced against the coparcenary property, if any, in possession of the petitioner herein.

The facts, in brief, are that the petitioner herein is the maternal uncle of the second respondent herein and the marriage of second respondent with one Mutyala Viswanadham, son of the petitioner herein, took place in the month of April 1996 as per Hindu rites and customs. At the time of marriage, the parents of the second respondent presented land to an extent of Ac.1.30 cents to the son of the petitioner and on 14.09.1995, the petitioner executed a registered settlement deed conveying land to an extent of Ac.1.12 ¼ cents of land and subsequently, Ac.0.25 cents of land in favour of his son i.e. the husband of the second respondent. After the marriage, the second respondent joined her husband and they lived in a house bearing door No.1-65 in one portion and the petitioner used to live in another portion, which is the ancestral

property. Out of the wedlock, they were blessed with a child, but he could not survive. At the time of delivery, doctors informed her that she was attacked with HIV virus and on examination, it was revealed that her husband was also suffering with the said virus. On questioning, the petitioner admitted before the parents of second respondent that he suppressed the fact of his son suffering with HIV virus. The second respondent and her deceased husband jointly borrowed an amount of Rs.3.00 lakhs from their relatives to meet their medical expenses. However, her husband died on 17.01.2009. After completion of death formalities, when the creditors demanded for discharge of debts, the petitioner refused to pay the money and warned that if the second respondent does not leave the said house and land, he would take serious action against her. In those circumstances, she was constrained to file the D.V.C. The petitioner herein filed a counter denying all the material allegations made in the D.V.C. and contended that he is not having any properties and he is aged about 65 years. He borrowed Rs.4.00 lakhs by mortgaging Ac.1.00 cents of land and his daughter is looking after his welfare.

The second respondent, in order to prove her case, marked Ex.P.1 i.e. registered partition deed between the petitioner and his son, dated 14.09.1995; Ex.P.2 i.e. registered settlement deed executed by the petitioner in favour of his son on 20.09.2005; Ex.P.3 i.e. registered settlement deed executed by the husband of the second respondent in favour of petitioner herein on 08.12.1997; and Ex.P.4 i.e. mutual family agreement between the petitioner and his son dated 25.07.2003. The learned Judicial Magistrate of First Class, Alamuru, after hearing both the parties

and appreciating the evidence on record, allowed the D.V.C. partly restraining the petitioner herein from interfering with the peaceful possession and enjoyment of the second respondent over her portion of the house bearing door No.1-65 in Teki village, but denied the maintenance and the medical expenses. Aggrieved by the same, the second respondent filed CrI.A.No.158 of 2011 on the file of the Court of Principal Sessions Judge, East Godavari at Rajahmundry. The learned Sessions Judge, after hearing both the parties and after appreciating the evidence, by judgment dated 09.06.2011 allowed the appeal setting aside the order of the trial Court in refusing to award maintenance and granted a sum of Rs.1,000/- per month towards maintenance to the second respondent directing her to enforce her claim against the coparcenay property, if any, the petitioner is in possession. Aggrieved by the same, the present Criminal Revision Case is filed.

The learned counsel appearing for the petitioner submitted that the D.V.C. as filed by the second respondent, itself is not maintainable under the provisions of the Protection of Women from Domestic Violence Act. The lower appellate Court ought to have appreciated the fact that the petitioner is having only an extent of Ac.1.20 cents of agricultural land and except the said land, he is not having any other properties including any ancestral properties. At the time of marriage, the petitioner settled Ac.1.30 cents of land to the second respondent and during the pendency of the D.V.C., she has disposed of the same in order to show that she has no properties and therefore, there are no *bona fides* on the part of the second respondent in claiming maintenance.

On the other hand, the learned counsel appearing on behalf of the second respondent supported the judgment of the lower appellate Court and sought to dismiss the Criminal Revision Case.

Having heard both the counsel and from the perusal of the material on record, it is revealed that the second respondent herein married the deceased son of the petitioner. At the time of delivery, it was informed by doctors that she is suffering with HIV virus. When the petitioner was questioned, he is admitted to have concealed the factum of his son suffering with HIV virus. From the documents marked as Exs.P.1 to P.4, it is revealed that the petitioner is having land in his name. It is also brought on record and also established from the evidence of petitioner that the second respondent and her deceased husband i.e. the son of the petitioner, have incurred heavy amount towards medical expenditure. After the death of son of the petitioner, when the creditors approached him, the petitioner refused to pay the amount and directed the second respondent to leave the matrimonial house. In those circumstances, the D.V.C. came to be filed. When it is brought on record that the petitioner is in possession of the property by virtue of the document executed by his deceased son, the petitioner is liable to pay maintenance to the second respondent. In fact, the lower appellate Court held that according to Section 18 of Hindu Adoption and Maintenance Act, Hindu wife is entitled to claim maintenance against her husband and under Section 19 of the said Act, father-in-law is under obligation to pay maintenance to his widowed daughter-in-law, when she is unable to maintain herself out of her earnings or other property or where she has no property of her own, she is unable to maintain herself

from the estate of her husband or her father or mother, or from her son or daughter, if any, or his or her estate, but such obligation is not enforceable against father-in-law when he has no means to do so from any coparcenary in his possession, out of which, his daughter-in-law has not obtained any share, and any such obligation shall cease on the re-marriage of the daughter-in-law. In view of the specific provision under Section 19 of the said Act, father-in-law is under legal obligation to maintain widowed daughter-in-law subject to certain conditions contained therein. In the case on hand, the petitioner is in possession of residential ancestral house in which, his deceased son is entitled to a share and after the death of his son, the wife of the son i.e. the second respondent herein is entitled to a share. Apart from the said residential house, the petitioner is also having Ac.1.28 cents of land and is getting sufficient income therefrom. When the second respondent is admittedly suffering with HIV virus and when she is not in a position to maintain herself and not having any properties in her name, the petitioner is liable to maintain the second respondent. Therefore, this Court does not find any irregularity or illegality in the judgment passed by the lower appellate Court. As such there are no merits and the Criminal Revision Case is liable to be dismissed.

Accordingly, the Criminal Revision Case is dismissed.

As a sequel, the interlocutory applications pending, if any, shall stand dismissed.

P.KESHA RAO,J

11th OCTOBER 2018.
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