

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 28.02.2018
DELIVERED ON : 22.01.2019

CORAM:
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.R.C.No.261 of 2018 and
Crl.M.P.No.2915 of 2018

P.Krishnan

...Petitioner

Vs

Santhi

...Respondent

Prayer: Criminal Revision filed under Section 397 r/w 401 of Cr.P.C., to set aside the order passed by the Judicial Magistrate Court, Palacode in CMP.No.5033 of 2017 in M.C.No.2 of 2015 dated 28.09.2017 by allowing this Criminal Revision Petition.

For Petitioner : Mr.R.Arun Dattan

JUDGMENT

This Criminal Revision Petition is preferred by the petitioner/respondent against the order passed by the learned Judicial Magistrate Court, Palacode in C.M.P.No.5033 of 2017 in M.C.No.2 of 2015 dated 28.9.2017 wherein the learned judicial Magistrate dismissed the amendment petition.

2.Brief case of the revision petitioner:

The case of the revision petitioner is that he married the respondent, who is a widow and the marriage was arranged after the death of his wife. The revision petitioner had 3 children through his first wife. The respondent also got a son name Gokul through her 1st husband. Both the petitioner and respondent lived for six years happily in the same roof with their children. Disputes arosed for the past 7 months between the petitioner and the respondent and finally, the respondent was driven out from the matrimonial home in the month of June 2014. Hence, the respondent filed the maintenance petition before the learned Judicial Magistrate in M.C.No.2 of 2015 directing the revision petitioner/respondent to pay sum of Rs.7,000/- per month for her maintenance and Rs.20,000/- for cloth, shelter and other expenses. The revision petitioner/respondent filed his counter in the M.C.No.2 of 2015.

3. During trial, the respondent examined herself as PW1, and PW2 and marked Exhibits P1 to P6. The revision petitioner/respondent examined himself as RW1 and marked Exhibits R1 and R2 and the evidences of both sides were closed and the case was posted for arguments. In the meantime, the respondent filed the amendment petition under section 311 of Cr.P.C. to correct the error in her maintenance petition alleging that she also got a son by name Gokul through her 2nd husband, the revision petitioner herein. The amendment application was vehemently contested by the revision petitioner alleging that Gokul was born through wedlock of her 1st husband. The learned Magistrate after appreciating contentions raised by both parties allowed the application filed by the respondent. Aggrieved over the same, the respondent filed this criminal revision.

4. The learned counsel for the revision petitioner/respondent submits that the Court below failed to consider that no marriage has been taken place between the petitioner and the respondent and the respondent was married to one Mr. Madhu who is said to be still alive and the marital relationship between the respondent and her husband is still active without any divorce or separation. While being so, the respondent filed the maintenance petition against the petitioner with an ulterior motive to extract money from the petitioner. The said maintenance case is at the stage of passing orders after an elaborate trial. So the main case itself is not maintainable.

5. The learned counsel for the petitioner submits that the Court below failed to consider that the respondent filed the amendment petition to amend an admitted fact by her in the petition and the learned judge miserably failed to peruse the case in proper perspective and allowed the said amendment petition along with the reopen petition.

6. The learned counsel for the petitioner submits that the Court below failed to consider that the amendment petition was filed nearly after two years that to at the stage of passing orders which nothing but sheer abuse of process of law.

7. I heard Mr. R. Arun Dattan, learned counsel for the revision petitioner and perused the entire case records and the annexure filed along with the revision petition.

8. The law is well settled that an amendment petition can be filed at any stage of proceeding in a case. This Court and the Hon'ble Apex Court considered the same in various cases.

9. The learned judicial Magistrate rightly allowed the amendment petition on the ground that the alleged fact ought to have been proved only by adducing necessary evidences and the mere allowing the amendment application would not create the proof of statement disclosed by the respondent.

10.In my view, even though the contentions raised by the revision petitioner stand merit, the fact alleged in the amendment petition is necessarily to be proved for effective adjudication in the maintenance proceedings.

11.The fact alleged in the amendment petition is a disputed question of fact as rightly contended by the learned judicial Magistrate and the revision petitioner objection will not affect the substratum of the case.

12.Therefore, this Criminal Revision Case is dismissed and the order passed by the learned Judicial Magistrate, Palacode in CrI.M.P.No.5033 of 2017 in M.C.No.2 of 2015 is confirmed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vs

To

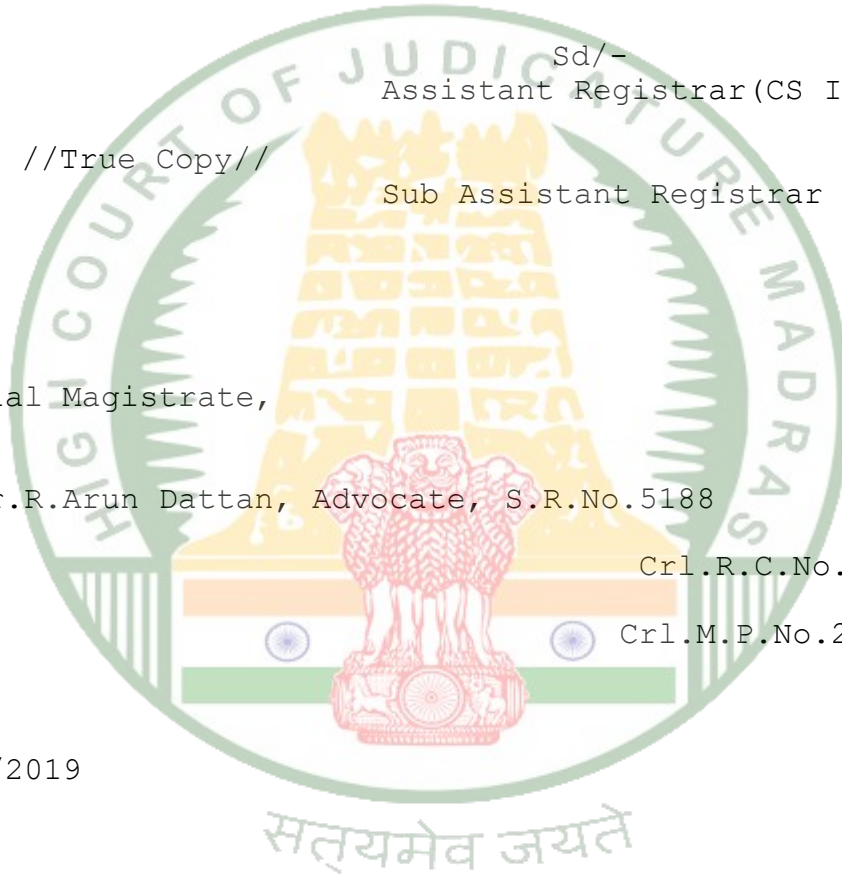
The Judicial Magistrate,
Palacode.

+1cc to Mr.R.Arun Dattan, Advocate, S.R.No.5188

CrI.R.C.No.261 of 2018
and
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RR(CO)

rrs 18/02/2019



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