

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Tuesday, the Tenth day of December Two Thousand Nineteen

PRESENT

THE HON`BLE MR JUSTICE S.M.SUBRAMANIAM

CMP No.19383 of 2019

in AS.No.648 of 2018

1 S.POOMATHI [PETITIONERS]

2 P.ABINAYA

3 P.PAVITHRA

Vs

1 THIYAGARAJAN [RESPONDENT]

2 M.ARTHI

3 MINOR T.YOGASRI

D/O K.THIYAGARAJA, MINOR REP BY MOTHER AND
GUARDIAN M.ARTHI, B/50, 2ND CROSS STRET,
SATHI ROAD, KAVUNDAPADI, BHAVANI TALUK,
ERODE DISTRICT

4 MINOR T.AKSHAYA

D/O K.THIYAGARAJA, MINOR REP BY MOTHER AND
GUARDIAN M.ARTHI, B/50, 2ND CROSS STRET,
SATHI ROAD, KAVUNDAPADI, BHAVANI TALUK,
ERODE DISTRICT

5 LEELAVATHI

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to permit the petitioners to withdraw the arrears of maintenance of Rs.15 lakhs deposited in EP No.75 of 2018 in OS.NO.26 of 2013 on the file of the fifth Additional District Court, Bhavani, pursuant to the order dated 26-04-2019 made in CMP No.22873 of 2018 in AS.No.648 of 2018 (in CMP.No.19383/2019) pending disposal of the above AS.No.648/2018.

Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.N.MANOCHARAN, Advocate for the petitioner and of M/S.ZEENATH BEGUM, Advocate for the respondent the court made the following order:-

The Civil Miscellaneous Petition is filed to permit the petitioners to withdraw the arrears of maintenance of Rs.15 lakhs deposited in E.P.No.75 of 2018 in O.S.No.26 of 2013, on the file of the V Additional District Court, Bhavani, pursuant to the order dated 26.04.2019 in C.M.P.No.22873 of 2019 in A.S.No.648 of 2018, pending disposal of the above appeal on the file of this Court.

2. The learned counsel appearing on behalf of the petitioners made a submission that they have filed a suit in O.S.No.26 of 2013 for partition of the suit properties into six equal shares and allot two such shares consecutively to the plaintiffs, and for claiming maintenance of Rs.5,000/- each to the 1st plaintiff, till her life time and to the plaintiffs 2 and 3 till their date of marriage, and for educational expenses of Rs.2,00,000/- per year to the plaintiffs 2 and 3 each, by creating a charge over the maintenance amount.

3. The marriage between the 1st petitioner and the 2nd defendant/1st appellant was solemnized on 26.05.1993, and the plaintiffs 2 and 3/petitioners 2 and 3 were born on 21.03.1994 and 06.03.1996 respectively. The status of the petitioners/plaintiffs are not in dispute.

4. The learned counsel for the petitioners state that the plaintiffs were unceremoniously sent out of the house of the 2nd defendant on 16.05.2003. Thereafter, the 2nd defendant/1st appellant filed H.M.O.P.No.40 of 2004, on the file of the learned Sub Court, Bhavani and a decree was passed on 28.06.2006. The petitioners are at sufferance and struggling hard to meet out their day to day expenditures. Thus, the above suit was filed.

5. The above facts are not seriously disputed by the parties. However, the learned counsel for the respondent mainly contended that the decree amount is erroneous and the Trial Court has not considered the period, for which, the maintenance is to be granted. In other words, in the absence of any specification of period of maintenance, the petitioners are not entitled to claim maintenance in clumsy. This Court is of the considered opinion that the suit was partly decreed in favour of the petitioners and the maintenance was granted. Maintenance being a livelihood to a person, the same is to be paid on a monthly basis and a delay would certainly cause hardship to the person, to whom the maintenance decree was passed. This Court cannot postpone the petition in respect of grant of maintenance and furthermore, pursuant to the interim order passed by this Court, the respondent has deposited a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs) before the Trial Court.

6. Under these circumstances, the petitioners are permitted to withdraw the arrears of maintenance of Rs.15,00,000/- (Rupees Fifteen Lakhs) deposited in E.P.No.75 of 2018 in O.S.No.26 of 2013, on the file of the Fifth Additional District Court, Bhavani, pursuant to the order dated 26.04.2019 made in C.M.P.No.22873 of 2018 in A.S.No.648 of 2018, pending disposal of the first appeal. In the event of filing any such application, the Trial Court is directed to disburse the deposited amount of Rs.15,00,000/- with accrued interest within a period of four weeks from the date of filing of such application. The petition stands allowed. No costs.

-sd/-

10/12/2019

/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE V ADDITIONAL DISTRICT
JUDGE, ERODE AT BHAVANI.

2 THE SECTION OFFICER,
VR SECTION, HIGH COURT, CHENNAI.

C.C. to M/S.N.MANOCHARAN Advocate on payment of necessary charges

C.C. to M/S.ZEENATH BEGUM, Advocate on payment of necessary charges

सत्यमेव जयते Order

in

WEB COPY

CMP No.19383 of 2019

in AS.No.648 of 2018

Date :10/12/2019

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