

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 26.03.2018
DELIVERED ON : 12.03.2019
CORAM:
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
Crl.R.C.No.1606 of 2017
and
Crl.M.P.No.16409 of 2017

1.J.Sivaraj

2.Jayanthi

.. Petitioners

Vs

Lekha Sindhu

.. Respondent

Prayer: Criminal Revision Case filed under Section 397 r/w 401 of the Criminal Procedure Code, against the order passed by the Judicial Magistrate No.III, Erode, in Crl.M.P.No.2186 of 2017 in D.V.A.No.17 of 2016 dated 05.12.2017.

For Petitioners : Mr.V.S.Kesavan

For Respondent : Mr.M.Guruprasad

JUDGMENT

This criminal revision petition is preferred by the petitioners/2nd and 3rd respondents against the order passed by the learned Judicial Magistrate No.III of Erode, in Crl.M.P.No.2186 of 2017 in D.V.A.No.17 of 2016 dated 5.12.2017.

2.Brief case of the petitioners

The facts of the case is that the respondent filed the petition under section 19 of the Protection from Domestic Violence Act before the learned Judicial Magistrate sharing the residential right at Door No 6/40-1, Balathandauthapani Road, Vaiyapuri Nagar, Erode. Both the 1st petitioner and the respondent maintained their matrimonial life only for a period of 3 weeks and after that due to the cruelty committed by the petitioners, the respondent was forced to live in their parents house and her sister aged about 25 years is ready for marriage for which the parents were actively searching for suitable

bridegroom, it is not possible for the respondent to live along with her parents with unmarried sister, hence the respondent filed the petition under section 19 of the Domestic Violence Act.

3.The brief case of the 1st petitioner is that he was married to the respondent on 11.4.2016 and the marriage was registered before the sub registrar on 12.4.2016. The 1st petitioner and the respondent entered the matrimonial home on 13.4.2016 and immediately that day itself, the respondent started to harass the 1st petitioner to reconvey the house property in her name. Further the respondent impliedly started mental torture to the 1st petitioner and committed cruelty by quarreling with the 2nd and 3rd petitioners without any reasons. Further the respondent threatened the 1st petitioner that she will commit suicide if the 1st petitioner questioned her act. Finally due to unbearable mental torture and harassment the 1st petitioner issued legal notice to the respondent and the entire litigation marched to the police station and after attending so many enquiries in the police station, on 17.8.2016 and 11.3.2017, the respondent received all her jewels and sridana properties given at the time of marriage. Now to make permanent harassment, the respondent filed the case before the learned judicial Magistrate in D.V.A.No.17 of 2017 and filed the Crl.M.P.No.2186 of 2007 seeking residential right.

4.The learned trial Court after hearing both parties allowed the application filed by the wife, the respondent. Aggrieved over the same the petitioners filed the revision.

5.The learned counsel for the petitioner submits that the order of the trial Court allowing the respondent's petition under section 19(1) (A) of D.V Act, which was seeking residential right is against law and materially irregular.

6.The learned counsel for the petitioner submits that the respondent filed the above petition for sharing the residence at Door No 6/40-1, Balathandayuthapani Road, Vaiyapuri Nagar, Erode, without producing any proof to show that the said premises is belonged to the respondent's husband. Infact, the said house is self acquired property of the mother of the husband. Hence seeking direction to reside there in is unsustainable, since the house itself is not belonged to the respondent's husband.

7.The learned counsel for the petitioner submits that the respondent's husband namely the son of the petitioners never resided therein as admittedly he was living in USA for the past seven years. Even after his marriage he along with his wife namely the respondent herein stayed for a few days only till their departure to USA. Even after their return from USA neither the son of the petitioners nor the respondent visited the house. Therefore, the respondent has no locus stand to seek for residence order.

8.The learned counsel for the petitioner submits that the order of the trial Court below refused to receive the title deeds stand in the name of the 2nd petitioner herein to prove her contention. Hence, the Court below could not refer the fact that the said house was built after purchasing the site in Vaiyapuri Nagar, on 26.8.2010 from her own funds.

9.The learned counsel for the petitioners submits that the order of the trial Court failed to consider the dictum of the Apex Court as reported in 2007-3-CTC-219 that shared household means the house belonging to or taken on rent by the husband or the house belong to the joint family of which the husband is a member. In the present case the house is self acquired property of the 2nd petitioner and except her no one else has any semblance of right in it. She purchased it in the year 2010, even before her son was leaving for employment in USA.

10.The learned counsel for the petitioners cited the following decisions in support of their contentions:

1) 2017 (5) CTC 515 Santineer Vincent Rajkumar, Indra Rajkumar Vs R.Rejitha

2) 2007 (3) CTC 219 S.R.Batra and another Vs Taruna Batra

11.The learned counsel for the respondents objected the contentions of the petitioners and sought for dismissal of the criminal revision and cited the following decision in their favour:

2016 (10) SCC 165 Hiral P.Harsora and others Vs Kusum Narottamdas Harsora and others

12.The learned counsel appearing for the respondent supported the findings of the trial Court and sought for dismissal of the appeal.

13.I have heard Mr.V.S.Kesavan, learned counsel for the petitioners and Mr.M.Guruprasad, learned counsel for the respondent and perused the entire materials available on record.

14.The facts necessary for disposal of this criminal revision, is that the disgruntled parties made several allegations against each other and filed the petition u/s 19 of the Domestic Violence Act.

15.Further averment in the complaint filed by the respondent before the trial Court reveals that the marriage turned sour. There is also a specific averment that the entire issue started within a period of three weeks and a case has been filed. The petitioners denied the allegations made in the complaint.

16.Be that as it may, I cannot understand the logical reason of filing the complaint by the respondent, as to how she would live in the petitioner's house making serious allegations against in-laws within a period of two weeks from the date of marriage. Further I fear that the right to reside in the shared household would create more problems instead of healing the hatred of the parties. Therefore the order passed by the learned trial Court would create more and serious problems between the parties. The property in question in the present case is also disputed and merely based on the uncontroverted averments in the complaint, the learned trial Court allowing the application filed by the respondent cannot be sustained.

17.In the result:

This criminal revision petition is allowed and the order passed by the learned Judicial Magistrate No.III, Erode, in CrI.M.P.No.2186 of 2017 in D.V.A.No.17 of 2016 dated 05.12.2017, is set aside. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Judicial Magistrate No.III, Erode.

Copy to:

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.V.S.Kesavan, Advocate sr.no.23038

+1cc to Mr.M.Guruprasad, Advocate sr.no.23743

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nr 29/03/2019



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