



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

Crl.RC. (MD)No.119 of 2016

and

Crl.MP. (MD)No.1929 of 2016

WEB COPY

P.R.Subramanian : Petitioner/Respondent
vs.
Rajammal : Respondent/ Petitioner

PRAYER: Petition filed under Section 397 & 401 of the Criminal Procedure Code to call for the records in connection with the order passed by the Family Court, Madurai, in M.C.No.90 of 2014, dated 26.11.2015 and set aside the same.

For Petitioner : Mr.K.Baalasundharam
For Respondent : Mr.M.Solaisamy

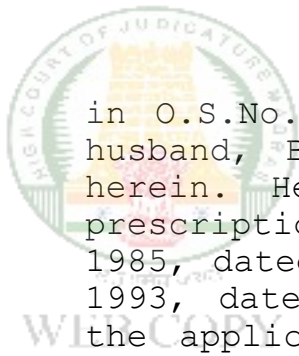
ORDER

This criminal revision case is filed by the petitioner as against the order passed by the Family Court, Madurai, in M.C.No.90 of 2014, dated 26.11.2015.

2. According to the petitioner / husband, it is the respondent / wife who deserted him and living in adultery with the petitioner's brother, namely, Balakrishnan. This fact was also elicited through the affidavit of one Kunjammal, W/o.Balakrishnan, before the Court of law, which was marked before the Court below as Ex.R6 to Ex.R11. But, without considering these aspects, the Family Court has awarded a sum of Rs.3000/-, to be paid by the petitioner / husband, as maintenance to the respondent / wife and hence, the instant revision case.

3. The brief fact of the case is that the marriage between the petitioner and the respondent was solemnized at Paramakudi, in the year 1963 and out of the wedlock, they are having a son and a daughter. The petitioner was working in the Revenue Department and now got retired. He developed illicit intimacy with one Vellaiyammal and failed to maintain the respondent / wife and their children. Therefore, the respondent / wife filed an application for maintenance under Section 125 Cr.P.C., directing the petitioner / husband to pay a sum of Rs.5000/-.

4. The petitioner / husband objected the petition by filing a counter affidavit that the respondent / wife deserted him in the year 1974 by developing intimacy with his brother, Balakrishnan. The wife of Balakrishnan filed a suit before the Paramakudi Munsif Court



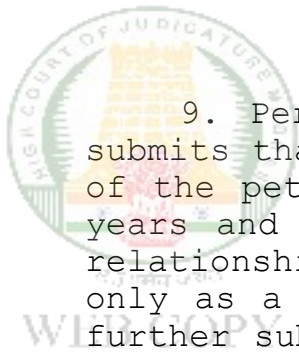
in O.S.No.171 of 1993, wherein, she specifically averred that her husband, Balakrishnan is living in adultery with the respondent herein. He also filed the exchange of notes and his medical prescriptions as well as the judgment and decree in O.S.No.15 of 1985, dated 24.03.1987 and the judgment and decree in O.S.No.171 of 1993, dated 28.06.1995. The Family Court, Madurai, partly allowed the application filed by the respondent / wife and directed the petitioner / husband to pay a sum of Rs.3000/-, as maintenance, per month, to the respondent / wife, on the ground that the marriage between the parties is not dissolved and that the petitioner / husband is receiving a pension of Rs.7000/-, per month.

5. Heard Mr.K.Baalasundharam, learned Counsel appearing for the petitioner / husband and Mr.M.Solaisamy, learned Counsel appearing for the respondent / wife.

6. The learned Counsel for the petitioner submits that the marriage between the petitioner and the respondent was held in the year 1963 and they are having a son and a daughter, out of the wedlock. The respondent / wife developed intimacy with the petitioner's own brother, namely, Balakrishnan and deserted the matrimonial house in the year 1974 and started to live with the said Balakrishnan. The wife of Balakrishnan, namely, Kunjammal, has also filed a suit for maintenance as against her husband, wherein, she has taken a ground that the said Balakrishnan is living in adultery with the respondent herein, namely, Rajammal.

7. The learned Counsel further submits that the daughter of the petitioner and the respondent, namely, Shanthi, is aged about 50 years and the son, namely, Shanmugapandian, is aged about 40 years and working as an Engineer at Singapore and both of them are well settled. It is the petitioner, who spent money for their education and also arranged for their marriage. Though the respondent is aware that her son is working as an Engineer at Singapore, she did not prefer any maintenance from her son, but, has filed this petition as against this petitioner, that too after 40 long years, only to harass him. The respondent, who has deserted the matrimonial house in the year 1974, filed this petition for maintenance in the year 2014, after 40 years.

8. The learned Counsel further submits that the petitioner is now aged about 83 years and is counting his days. No doubt, the petitioner is receiving a sum of Rs.7000/- as pension. But, he is in his death bed, counting his days and even for his medical expenses, he depends upon others. The petitioner has also divided his properties, equally and gave all his properties to his son and daughter and this pension amount is not even sufficient for his medical expenses. Therefore, the learned Counsel prays for interference.



9. Per contra, the learned Counsel for the respondent / wife submits that when the respondent married the petitioner, the brother of the petitioner, namely, Balakrishnan, was only aged about seven years and the said Balakrishnan got married in the year 1977. The relationship between the respondent and the said Balakrishnan is only as a Mother - Son and not as projected by the petitioner. He further submits that the respondent is also aged about 70 years and there is nobody to take care of her.

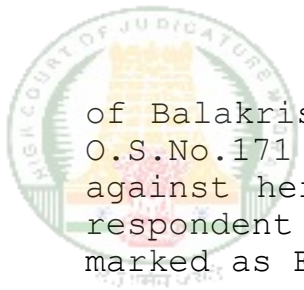
10. The learned Counsel further submits that the wife of Balakrishnan filed a suit in O.S.No.15 of 1985 against her husband and in that suit, she did not make any such averment. But the said suit was withdrawn later and they have also lived together for sometime. After seven years, she filed another suit in O.S.No.171 of 1993 for the same relief and in that suit, she made certain averments as against the respondent herein. The fact remains that Balakrishnan has also married another woman, namely, Selvi, in the year 2002 and therefore, the materials relied upon by the learned Counsel for the petitioner are not sufficient to reject the claim of the respondent / wife for maintenance. Even if the petitioner / husband is not having any source, he is bound by law and liable to pay maintenance to the respondent / wife and therefore, the learned Counsel prays for dismissal.

11. This Court paid it's anxious consideration to the rival submissions and also to the available materials.

12. The trial Court ordered for maintenance based on the ground that the marriage between the petitioner / husband and the respondent / wife is not dissolved and this petitioner is also a retired Government servant, drawing a pension and therefore, he is liable to pay maintenance to his wife. It is an admitted fact that the marriage between the petitioner and the respondent was solemnized in the year 1963 and they have also separated in the year 1974. This petition for maintenance is filed only in the year 2014, after 40 long years. The fact that the respondent / wife was able to maintain herself for the past 40 years has to be taken into account before deciding this application.

13. The petitioner / husband and the respondent / wife are having a son and a daughter, who are also well placed in Abroad. Their son, namely, Shanmugapandian, aged about 40 years, is an Engineering Graduate working at Singapore. Their daughter, Shanthi, aged about 50 years, married and well settled. If really the respondent / wife is in need of any maintenance for survival, she would have claimed the same from her son and / or her daughter, who are well placed, instead, filed this application after 40 years.

14. The relationship of the respondent / wife with her brother-in-law, Balakrishnan, is not denied, but, it is stated that it is a relationship of mother and son. But, in contra to the same, the wife



of Balakrishnan, namely, Kunjammal, filed a suit for maintenance in O.S.No.171 of 1993, wherein, she made certain specific averment as against her husband, Balakrishnan, that he is in adultery with the respondent herein. The judgment passed in O.S.No.171 of 1993 is also marked as Ex.R10 & Ex.R11.

WEB COPY

15. The further contention of the learned Counsel for the petitioner is that the petitioner was served as an Office Assistant in the Taluk Office, retired from service, now aged about 83 years and is in death bed counting his days. He is getting a meagre pension of Rs.7000/-, which is not sufficient to meet his medical expenses.

16. In the given facts and circumstances of the case and considering the fact that all along the respondent / wife was able to maintain herself and has filed this application after 40 long years, this Court is inclined to interfere with the impugned order of maintenance.

17. Accordingly, this Criminal Revision Case is allowed and the impugned order passed by the learned Judge, Family Court, Madurai, in M.C.No.90 of 2014, dated 26.11.2015, is set aside. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

gk

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Judge,
Family Court,
Madurai.

Crl.RC. (MD)No.119 of 2016

01.09.2020

VB (14.09.2020) 4P 2C