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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.12.2021

CORAM :

THE HONOURABLE MS. JUSTICE R.N.MANJULA

Crl.R.C.Nos.1330 & 1331 of 2016
and
Crl.M.P.Nos.11947 & 11949 of 2016

1.A.V.Purushothaman
S/o.A.V.Vibishan

2.Nirmala
W/o.Purushothaman

3.Arunkumar

.. Petitioners / Respondents 1 to 3
in both cases

Vs.

AB.Krishnapriya

.. Respondent / Complainant
in both cases

COMMON PRAYER : Criminal Revision Cases have been filed under sections 397 read with 401 of Criminal Procedure Code to call for the records and set aside the order passed in Crl.A.Nos.23 & 17 of 2015 on the file of the learned XV Additional Sessions Judge, Chennai, dated 07.10.2016 reversing the judgment passed in Crl.M.P.No.1511 of 2012 in M.C.No.13 of 2011 on the file of the XXIII Metropolitan Magistrate, Chennai, dated 24.12.2014.

For Petitioners in both cases : Mr.G.Mohankrishnan

For Respondent in both cases : Mr.S.Parthasarathy

COMMON ORDER

This Criminal Revision Case have been filed challenging the order of the learned XV Additional Sessions Judge, Chennai, dated 07.10.2016 made in C.A.Nos.17 and 23 of 2015.

2. The Revision petitioners are the father-in-law, mother-in-law and son-in-law of the 1st petitioner. The respondent/complainant is the wife of the deceased son of the 1st



petitioner viz., A.N.Barani Vinoth Kumar. The respondent has filed a petition under Domestic Violence Act before the learned XXIII Metropolitan Magistrate, Saidapet, Chennai, and sought the reliefs of maintenance and residential order. The learned XXIII Metropolitan Magistrate, Chennai, passed an order in CrI.M.P.No.1511 of 2012 on 24.12.2014. In the said order, the learned Magistrate awarded maintenance of Rs.20,000/- per month payable to the respondent and her daughter by the 1st revision petitioner. Since the learned Magistrate had not granted the residential order, the respondent has preferred an appeal before the learned Principal Sessions Judge, Chennai in C.A.No.17 of 2015. These revision petitioners have also challenged the order awarding interim maintenance by preferring an another appeal in C.A.No.23 of 2015. After hearing both sides, the learned XV Additional Sessions Judge, to whom the matter was assigned from the learned Principal Sessions Court, has passed a common order on 07.12.2012. By virtue of the common order, the appeal in C.A.No.17 of 2015 was allowed and the appeal in C.A.No.23 of 2015 was partly allowed by modifying the maintenance amount from Rs.20,000 to Rs.10,000/- per month and the maintenance amount was ordered to pay from November 2014. The respondent has not challenged the reduction of maintenance amount. However, the revision petitioners have challenged the order passed in both the C.A.Nos.17 & 23 of 2015 by preferring two revision cases in CrI.R.C.Nos.1330 and 1331 of 2016 before this Court.

3. Heard the learned counsel for the petitioners and the learned counsel for the respondent.

4. The learned counsel for the revision petitioners submitted that the husband of the respondent had died in a road accident. Even before his death, the respondent had taken her child and gone to her relative's place and after 9 years, she has filed a petition under Domestic Violence Act, by abusing beneficial legislation; during the pendency of this revision petitions, the 1st revision petitioner died; the respondent herself has been employed as a school teacher and that was suppressed by her while filing the petition claiming maintenance; the respondent has filed a petition under Domestic Violence Act, just to harass the revision petitioners and hence both the revision cases should be allowed.

5. The learned counsel for the respondent submitted that the respondent is the wife of the pre deceased son of the 1st and 2nd petitioners. She had lost her husband at a very young age when her only female child was 3 years old; her entitlement of residence and maintenance cannot be denied by the revision petitioners and hence both the revision cases should be dismissed.



6. Points for consideration:

"Whether the judgment of the lower Appellate Court reversing the judgment of the learned trial Judge is unfair, improper or not legal and in conformity?"

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7. The relationship between the revision petitioners and the respondent is not denied. The respondent, being the wife of the pre deceased son of the 1st and 2nd petitioners, has filed petition under Domestic Violence Act claiming maintenance and residential order. When the husband of the respondent died, her only female child was just 3 years old and from then onwards she was not supported by the family of her in-laws. She is living with her relatives and at some point of time she claimed maintenance from the rental income being enjoyed by the revision petitioners, which were accrued from the joint family properties. So according to the respondent, her deceased husband is entitled to enjoy the fruits of the joint family property and after his death, she was deprived of the support of her in-laws.

8. In the meanwhile, the 1st revision petitioner is said to have settled some of the family property in favour of his three daughters by leaving this respondent and her child. She has also challenged the said settlement deed by way of preferring a civil suit in O.S.No.9834 of 2009 and also claimed partition. In the said suit, a preliminary decree for partition was also granted. So it is evident from the judgment of the civil Court that the respondent is entitled to a share in the joint family properties as a legal heir of her deceased husband. In all probabilities, the said decree might have challenged by the revision petitioners also by preferring an appeal. However the decree of the trial Court has not been stayed. The respondent, who is the wife of the pre deceased son of the 1st petitioner, has right in the joint family property in the hands of the revision petitioners. Since the revision petitioners alone were enjoying the rental income that is being accrued from the joint family properties, the respondent has claimed maintenance from the said income. Though the 1st revision petitioner is said to have died during the pendency of this proceedings, the fact remains that his assets are enjoying in the hands of the 2nd revision petitioner. Despite the respondent got employed elsewhere as an Elementary School teacher and drawing a meagre salary, in the setting cost of living and the standard of life, it is not possible for her to maintain herself and her child, with the paltry sum earned by her. Though the 2nd revision petitioner has got no duty to support the respondent and her child, the respondent and her child are entitled to be maintained by the 2nd petitioner, from her assets in the hands of the 2nd petitioner and in which, the respondent has also got a share. Such right over the joint family property would include her right of residence. So in my opinion, the order of the



Courts below does not suffer from any factual or legal infirmity and it does not warrant any interference.

9. In the result, this Criminal Revision Cases are dismissed. Consequently, the connected criminal miscellaneous petitions are also dismissed. The common judgment of the learned XV Additional Sessions Judge, Chennai, dated 07.10.2016 passed in Crl.A.Nos.23 & 17 of 2015 stands confirmed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The XV Additional Sessions Judge,
Chennai.
2. The XXIII Metropolitan Magistrate,
Chennai.
3. The Section Officer,
Criminal Section,
High Court, Madras - 104.

+2ccs to Mr.G.Mohankrishnan, Advocate, S.R.No.67314,67315

Crl.R.C.Nos.1330 & 1331 of 2016
and
Crl.M.P.Nos.11945 to 11947 & 11949 of 2016

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