



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 03.03.2021

Pronounced on : 23 .03.2021

CORAM

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THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR
CRL.RC(MD) .No. 516 of 2017 and
Cr1.M.P(MD) .No.5769 of 2017

S.Subramanian : Revision Petitioner / Respondent

Vs.

1.Vidhya
2.Minor Sathishkumar
3.Minor Hariharan
(respondents 2 and 3 are
rep. by their mother and Guardian
viz., 1st Respondent herein) : Respondents / Petitioner

PRAYER:- Criminal Revision Case filed under Section 397 r/w.. 401 Cr.P.C., against the order of maintenance by the learned Judge, Family Court, Tiruchirappalli in M.C.No.140 of 2014 dated 22.03.2016 by which, the petitioner is directed to pay a sum of Rs.4,000/- each to the respondents totally Rs.12,000/- from the date of filing of maintenance application.

For petitioner : M/s. M. Viji
for S. Deenadhayan

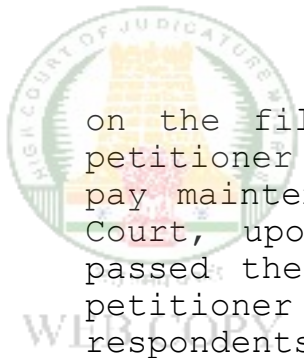
For respondents : Mr. C. Karthikeyan
for T. Lenin kumar

ORDER

This Criminal Revision is directed against the order passed in M.C.No.140 of 2014 dated 22.03.2016 on the file of the Family Court, Thiruchirapalli.

2. It is not in dispute that the marriage between the revision petitioner and the first respondent was solemnized on 12.09.1999 at Thirumalapadi Vaidhiyanathaswamy Thirukkoil as per Hindu Rites and Customs, that due to their wedlock, the respondents 2 and 3 were born to them, that subsequently there arose misunderstanding between them and that they are living separately.

3. The first respondent for herself and for her minor sons, by invoking Section 125 Cr.P.C., has laid the above case in M.C.No.140 of 2014 claiming monthly maintenance at Rs.4,000/- each



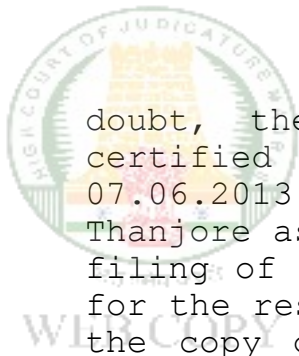
on the file of the Family Court, Thiruchirapalli. The revision petitioner has filed a counter statement disputing the liability to pay maintenance to the respondents. The learned Judge of Family Court, upon considering the evidence and on hearing both sides, passed the impugned order on 22.03.2016, directing the revision petitioner to pay monthly maintenance at Rs.4,000/- each to the respondents from the date of petition. Aggrieved by the said order, the revision petitioner / husband has come forward with the present petition.

4. Whether the impugned order passed in M.C.No.140 of 2014, dated 22.03.2016 on the file of the Family Court, Thiruchirapalli is liable to be set aside? is the point for consideration.

5. The learned counsel appearing for the revision petitioner would contend that the trial Court has failed to appreciate the fact that the first respondent alone had refused to live with the petitioner and executed a release deed, dated 02.06.2012 by which matrimonial tie-up was broken down, that the trial Court has also failed to appreciate the fact that in pursuance of the release deed, he had taken divorce proceedings in HMOP.No. 140 of 2012 and obtained the decree of divorce and that the trial Court ought not to have rejected the decree of divorce on the ground that ex parte order of divorce has been granted. He would further contend that the revision petitioner is getting a salary of Rs.11,212/-, that the trial Court has also failed to appreciate the fact that the revision petitioner has no other source of income, that the trial Court presumed the income of the petitioner on the basis of the surmises and conjectures and that the impugned order granting maintenance is liable to be set aside.

6. It is the specific case of the revision petitioner that the first respondent had executed the release deed on 02.06.2012 and whereunder, the first respondent has stated that she decided to live separately, that she has agreed to leave the two children with the revision petitioner, that she will not claim any maintenance or any other assistance, that she will not raise any problem or issue in case if the petitioner decided to re-marry and that since she had handed over both the children with him she will not disturb them. As rightly observed by the learned trial Judge, the revision petitioner has not chosen to produce and exhibit the alleged release deed dated 02.06.2012. As rightly contended by the learned counsel for the respondents, since the release deed is not available before the Court, extracting a portion of the passage allegedly found in the release deed and relying on the same in the Chief examination affidavit of the petitioner, cannot be entertained and the said portion of the evidence cannot be considered as legal evidence.

7. The next contention of the revision petitioner is that in pursuance of the release deed, he has filed a divorce petition and obtained divorce with the consent of the first respondent. No

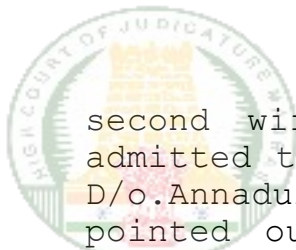


doubt, the revision petitioner has produced and exhibited the certified copy of the order passed in HMOP.No. 140 of 2012 dated 07.06.2013 passed by the learned Additional Subordinate Judge, Thanjore as Ex.R1. The learned trial Judge by commenting upon non filing of the copy of divorce petition to verify the address given for the respondents, has held that the revision petitioner by filing the copy of the petition could have proved the obtaining of the ex parte divorce as the first respondent has not turned up. It is evident from Ex.R1 order of divorce that though the petitioner has claimed divorce on two grounds viz., cruelty and desertion, as rightly contended by the respondents side, there is no specific finding of the Sub Court that the grounds of cruelty and desertion were proved. It is pertinent to mention that the learned Subordinate Judge, by relying on the alleged release deed dated 02.06.2012 and by observing that the first respondent has voluntarily consented for separating from the revision petitioner and executed Ex.R1 release deed and that since the wife has not chosen to file any counter objecting to the case of the revision petitioner, the Court is inclined to allow the petition. It is further evident that the first respondent has not chosen to enter into appearance and as there was no representation for her, she was set ex parte. No doubt, any ex parte decree or order cannot be considered as invalid and the same is to be treated on par with a decree passed after full contest and that the ex parte decree is a valid decree till it is set aside.

8. It is pertinent to mention that the Hindu Marriage Act does not envisage passing of divorce decree with or without consent of other side. Except the decree for divorce on mutual consent under Section 13B, the consent decree for divorce must be regarded as one without jurisdiction, as the same is passed without proving any of the grounds mentioned in Section 13 of the Hindu Marriage Act and is in violation of the mandatory requirements under Section 23 of the said Act. As rightly contended by the learned counsel for the respondents, since there was no specific finding that the first respondent was guilty of desertion, the present contention of the revision petitioner that he is not liable to pay maintenance as the first respondent alone had deserted him, is devoid of substances and the same is liable for instant rejection.

9. Now, coming to the quantum of maintenance, as already pointed out, the respondents have claimed the monthly maintenance at Rs.4,000/- each and the trial Court also awarded the same.

10. It is the specific case of the respondents that the revision petitioner is working as a driver in the Tamil Nadu State Transport Corporation and is getting monthly income of Rs.20,000/-. The defence of the revision petitioner is that after deduction, he is only getting Rs.11,212/-, that a sum of Rs.5,000/- was deducted monthly towards the repayment of personal loan and that the revision petitioner alone has to take care of his aged parents and also her



second wife. The revision petitioner has himself specifically admitted that after the alleged divorce, he married one Indumathi, D/o. Annadurai Kaliyaperumal. The trial Court in its order has pointed out that the revision petitioner has stated that he is getting Gross Salary of Rs.17,000/- and after deductions, is getting only Rs.7,000/- per month. Admittedly, the revision petitioner has not chosen to file his salary certificate or pay slip but the main fact remains that he is working as Conductor in the Tamil Nadu State Transport Corporation.

11. Considering the above facts and circumstances of the case, educational expenses of the respondents 2 and 3, status of the parties and the present economic scenario, the fixing of the monthly maintenance at Rs.4,000/- each by the trial Court cannot be found fault with and the amount awarded is very much reasonable and the same cannot said to be excessive. The revision petitioner has not advanced any other reason or ground to impugn the order. Hence, this Court decides that the revision is devoid of merits and the same is liable to be dismissed. Considering the other facts and circumstances of the case, this Court further decides that parties are to be directed to bear their own costs and the above point is answered accordingly.

12. In the result, this Criminal Revision Case is dismissed. Parties are directed to bear their own costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2021

Sub Assistant Registrar(CS)

Trp
To

1. The Judge, Family Court, Tiruchirappalli.

+1 CC to M/s.T.LENIN KUMAR, Advocate (SR-13018[F] dated 23/03/2021)

order made in
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