



Crl.R.C.No.1361 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.09.2022

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1361 of 2022 and
Crl.M.P.No.14843 of 2022

S.Suhasini

...Petitioner

-Vs-

1. R.Vinodkumarsah
2. G.Rajasah
3. Suseela Bai

...Respondents

Criminal Revision Case filed under Sections 397 read with Section 401 of Cr.P.C. to set aside the judgment dated 18.02.2022 in C.A.No.16 of 2020 passed by the learned District and Sessions Judge, District and Sessions Court No.II, Kancheepuram, confirming the order passed in Crl.M.P.No.1237 of 2020 in D.V.C.No.2 of 2020 dated 29.09.2020 by the learned Judicial Magistrate No.I, Kancheepuram.

For Petitioner : Mr.K.Alayapan



Crl.R.C.No.1361 of 2022

ORDER

WEB COPY This criminal revision case is preferred against the judgment dated 18.02.2022 in C.A.No.16 of 2020 passed by the learned District and Sessions Judge, District and Sessions Court No.II, Kancheepuram, confirming the order passed in Crl.M.P.No.1237 of 2020 in D.V.C.No.2 of 2020 dated 29.09.2020 by the learned Judicial Magistrate No.I, Kancheepuram.

2 The petitioner is wife, first respondent is husband and second and third respondents are parents of the first respondent and in-laws of the petitioner. The petitioner/wife filed complaint before the Protection Officer under the Domestic Violence Act and based on the report, the case was taken on file in D.V.C.No.2 of 2020, in which the petitioner/wife got an ex-parte order for interim share in the house. Challenging the same, second and third respondents, who are the in-laws of the petitioner/wife have filed a petition in Crl.M.P.No.1237 of 2020 in D.V.C.No.2 of 2020 on the ground that the petitioner/wife having own house, obtained an ex-parte order of interim share and the learned Judicial Magistrate No.I, Kancheepuram by



Crl.R.C.No.1361 of 2022

order dated 29.09.2020 set aside the ex-parte order observing that the petitioner/wife is living in her own house. Aggrieved over the same, the wife has filed an appeal in C.A.No.16 of 2020, which was also dismissed by an order dated 18.02.2022 by the learned District and Sessions Judge, District and Sessions Court No.2, Kanchipuram. Challenging the above order, now the petitioner/wife is before this Court with the present revision.

3 According to the petitioner/wife, the first respondent/husband has not filed any petition against the ex-parte order of interim share and it is only the parents of the first respondent/husband and he was not even added as party in the said petition and the learned Magistrate without considering the position of the petitioner dismissed the ex-parte order. The learned counsel further contended that the house was purchased by the first respondent/husband by availing loan from the Bank and he is not repaying the loan and hence the Bank officials are likely to take possession of the property and therefore it is necessary to grant share in the house for the petitioner/wife to reside. The learned counsel submitted that when the wife has no house to reside and the husband is residing in the rental home, the



Crl.R.C.No.1361 of 2022

wife is entitled for share in the rental home also and that being the law, the petitioner/wife is entitled to get share in the house. Both the Courts below have failed to consider the above facts and refused to grant share in the home, which warrants interference.

4 Heard the learned counsel appearing for the petitioner. Even though the matter came up for admission, since it is the revision against the order passed in the miscellaneous petition by the learned Magistrate and the lower appellate court also confirmed the same, this Court is inclined to dispose of the main revision at the admission stage itself.

5 This revision is filed against the dismissal of ex-parte order granting interim share in the house against the husband and in-laws of the petitioner/wife. It is contended by the learned counsel for the petitioner/wife that the husband has not filed any petition to set aside the ex-parte order and it is only the in-laws and both the Courts below have failed to appreciate the facts and refused to grant interim share in the house.



Crl.R.C.No.1361 of 2022

WEB COPY 6

Admittedly now the petitioner/wife is residing in her own house and mere non payment of loan by the husband and mere apprehension that the petitioner may be thrown out of the home by the Bank for non payment of the loan are not grounds to grant interim share of residing in the house owned by the in-laws,when the petitioner/wife is residing in her own house. If the petitioner/wife lost her home as apprehended by her, at that time she can always file a petition and get interim share of residing in the home. As per the Act, if the petitioner/wife does not have any alternate home, then she is entitled to get share of residing in the matrimonial home, but in this case, admittedly the petitioner/wife residing in her own house and therefore both the Courts below have rightly appreciated the facts and circumstances and set aside the ex-parte order granting interim share of residing in the house. Further it is only the order passed in the miscellaneous petition and still the main Domestic Violence case is pending. Therefore this Court does not find any perversity in the orders passed by the Courts below.



Crl.R.C.No.1361 of 2022

7 In the result, the criminal revision stands dismissed.

Consequently connected miscellaneous petition is closed. However the petitioner/wife is at liberty to raise all her defence and establish her case in the main Domestic Violence case before the learned Magistrate.

26.09.2022

Index : Yes/No

Internet: Yes/No

Speaking Order/Non Speaking Order
cgi

To

1. The District and Sessions Judge,
District and Sessions Court No.II, Kancheepuram.
2. The Judicial Magistrate No.I, Kancheepuram.



WEB COPY



Crl.R.C.No.1361 of 2022

P.VELMURUGAN, J.,

cgi

Crl.R.C.No.1361 of 2022 and
Crl.M.P.No.14843 of 2022

26.09.2022