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C.R.P.(MD)No.301 of 2021



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD)No.301 of 2021

and

C.M.P.(MD)No.1700 of 2021

1.D.Janardhanan

2.D.Sreedhar

.. Petitioners

Versus

A.Dhanasekaran

Sethuthanam (Died)

.. Respondents

Prayer :- Petition filed under Article 227 of the Constitution of India, against the fair and executable order dated 27.02.2020, passed by the learned Principal District Judge, Madurai, in I.A.No.63 of 2018 in P.O.P.No.1 of 2018.

For Petitioners : Mr.J.Barathan

For Respondent : Mr.G.Aravindan
for Mr.A.Mohan

ORDER

This Civil Revision Petition has been filed against the fair and executable order dated 27.02.2020, passed by the learned Principal District Judge, Madurai, in I.A.No.63 of 2018 in P.O.P.No.1 of 2018.



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2. The petitioners herein are the respondents in I.A.No.63 of 2018 in P.O.P.No. 1 of 2018, on the file of the Principal District Court, Madurai. The said Interlocutory Application was filed by the respondent along with his deceased wife Sethuthanam. The petitioners herein are the sons of the respondent and the said Sethuthanam. Pending enquiry in P.O.P.No.1 of 2018, the respondent filed an application in I.A.No. 63 of 2018 under Section 20 of the Hindu Adoptions and Maintenance Act, 1956, read with Section 151 of C.P.C.

3. The specific case of the respondent before the trial Court was that he has sold his immovable property on 18.03.2016 to discharge the loans taken by the petitioners in connection with their business and they have refused to take care of the respondent and his wife namely, their father and mother. By the impugned order, the trial Court has directed the petitioners herein to pay a sum of Rs.10,000/- each to the respondent herein towards interim maintenance. The order of the trial Court also records that the respondent is the recipient of pension of Rs.20,000/- per month.

4. The impugned judgment and decree is challenged primarily on the ground that there is no averment in the petition filed either in P.O.P.No.1 of 2018 or in I.A.No.63 of 2018 to state that the respondent was unable to maintain himself and the petitioners' mother [since deceased] from the pension amount.

5. The learned counsel for the petitioners submits that at the instance of the petitioners' sister and her husband namely, Thangakumar, the respondent has filed the



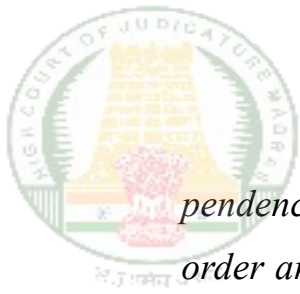
vexatious suit and the said I.A. That apart, it is argued that the I.A. ought not to have numbered or ordered pending numbering of the suit and therefore, on that count also, the order passed by the trial Court is liable to be interfered with.

6. The learned counsel for the petitioners further submits that the first petitioner is himself undergoing dialysis on account of kidney failure and that he has no income and that the second petitioner is taking care of the first petitioner and the first petitioner's wife apart from his family.

7. Defending the impugned order, the learned counsel for the respondent submits that the impugned order is well reasoned and requires no interference. It is submitted that there are averments not only in the P.O.P. regarding the indigent status of the respondent but, also in the application filed under Section 20 of the Hindu Adoptions and Maintenance Act, 1956. It is further submitted that the trial Court has considered the lifestyle of the respondent and has ordered a sum of Rs.10,000/- each payable to the respondent by the petitioners.

8. In support of his submission, the learned counsel for the respondent has relied on the decision of the Delhi High Court rendered in **Ms.Alisha Chaudhary vs. Sh.Tarun Chaudhary** reported in (2009) 110 DRJ 544. A reference is made to Paragraph No.12, which reads as under:-

"12. An application for grant of interim maintenance during the



pendency of a pauper application is an application for an interlocutory order and therefore, Section 94(e) of CPC applies. There are no restrictions in the Code regarding passing of such interlocutory orders. The same provisions of law apply to the pauper applications as apply to suits and hence order of interim maintenance can be passed pending pauper application. Therefore, the contention of the defendant to the extent that no interim maintenance can be granted at this stage, stands rejected."

9. I have considered the arguments advanced by the learned counsel for the petitioners and the learned counsel for the respondent.

10. The order passed by the trial Court in I.A.No.63 of 2018 on 27.02.2020 is a well reasoned order and requires no interference. Section 20 of the Hindu Adoptions and Maintenance Act, 1956, contemplates an obligation on a person to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents. As per sub-clause (2) of Section 20 of the said Act, a legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor. Sub-clause (3) of Section 20 of the Act indicates that an obligation is cast on a person to not only maintain his or her aged parents, but also unmarried daughter(s) when the parents or the unmarried daughters are unable to maintain out of their own earnings or property.

11. The admitted fact of the case is that the respondent had sold the property on 18.03.2016, for discharging the liabilities incurred by the first petitioner and



approximately Rs.50,00,000/- was paid to M/s.Cholamandalam Finance Pvt. Ltd. and the balance amount was partly utilized by the respondent for meeting out the medical expenses of the petitioners' mother/respondent's wife namely, Sethuthanam. The fact that the respondent is forced to live in the house of his daughter itself shows that he cannot maintain himself out of his own pension, as he has no other property, which would give him shelter at the fag end of his life.

12. Considering the fact that the wife of the respondent/mother of the petitioners died and considering the fact that the respondent is reportedly receiving monthly pension of Rs.20,000/- only, but has not filed any document to substantiate the actual amount of pension was limited to only Rs.20,000/- per month, this Civil Revision Petition is partly allowed, by directing the petitioners to pay a sum of Rs.10,000/- cumulatively per month to the respondent for the period commencing from April, 2023. The petitioners shall pay arrears as on the date of this order in terms of the impugned order of the trial Court. No costs. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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09.03.2023

To
The Principal District Judge,
Madurai.



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C.SARAVANAN, J.

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Order made in
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