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C.R.P.No.3988 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.02.2024

PRONOUNCED ON: 15.03.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

C.R.P.No.3988 of 2023

and

C.M.P.Nos.24491 & 24492 of 2023

1. P. Damodaran

2. D. Usha

3. D. Ponraj

...

Petitioners

/vs/

Anjali @ Malaikolundu Anjalai

...

Respondent

Prayer : Civil Revision Petition has been filed under Article 227 of the Constitution of India to call for the records pertaining to the proceedings in DVC No.117 of 2023 pending on the file of Special Court for Trial of Domestic Violence Act Cases at Coimbatore and to quash the same.



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For Petitioners ... Mr. S.Subramaniya

For Respondent ... Mr. A.S.Ashif Mohamed

ORDER

This Civil Revision Petition has been filed to quash the proceedings in DVC.No.117 of 2023 pending on the file of the Special Court for Trial of Domestic Violence Act Cases, Coimbatore.

2. According to the petitioners, the first petitioner got married the respondent herein on 07.05.1975 at Tirumalai Tirupathi Devasthanam Temple, in accordance with Hindu Rites and Customs. Out of the wedlock 3 children, viz. Usha(2nd petitioner), Uma and Sreenivasan were born. The first petitioner married one Devaki and the third petitioner herein born through her. The said Devaki died on 03.12.1995. The first petitioner is carrying on various business and he was also doing wet grinder business under the name and style of Bakyalakshmi wet grinders at Coimbatore. From and out of the income derived from his business, he has purchased numerous properties in and around Coimbatore. The first petitioner has settled the properties in favour of the petitioners 2 and 3 and had purchased



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several properties out of his own income in favour of his other children.

Since the first petitioner has settled the property situated at Bagyalakshmi Complex No.108, NSR, Road, Saibaba Colony, Coimbatore in favour of the petitioners 2 and 3, the respondent has started to give various problems to the petitioners and she has also made a false complaint with the police. At the instigation and inducement of her son Sreenivasan, the respondent on ill advice filed the Domestic Violence case against the petitioners to force the first petitioner to give the property to her. The respondent herein had filed application under Section 12 of the Protection of Women from Domestic Violence Act 2005 (43 of 2005) against the revision petitioners herein and prays to grant the following reliefs:

“a. Prohibiting the respondents from committing acts of domestic violence by granting an injunction under Section 18 of the Act.

For permanent injunction restraining the defendant Nos.2,3, and 4 on the basis of the settlement deeds dated 02.02.2022 registered as document Nos.420/2022 & 421/2022 on the file of the Sub-Registrar Office, Peeelamedu, Coimbatore from mortgaging, or alienating or encumbering the suit property in any manner whatsoever.



b. Restraining the 1st respondent as per Section 18 and 19 not to alienate or encumber the shared house Door No.108, NSR Road, Bagyalakshmi Complex, Saibaba Colony, Coimbatore – 641 011.

c. Directing the 1st respondent to give monetary relief amount to Rs.1,00,000/- per month to the petitioners as claimed as provided under Section 20 of the Act.

d. Directing the respondents to return the jewells to the petitioner 66 sovereign gold jewells belonging to them under Section 19(8) of Domestic Violence Act.

e. Directing the respondents to pay a compensation of Rs.25,00,000/- to the petitioner under Section 22 of the Act towards mental torture and emotional distress assaults on the petitioner caused by the acts of domestic violence by the respondents and other reliefs. ”

To quash the said application, the present Civil Revision has been filed.

3. The learned counsel for the petitioner submitted that the Domestic Violence Case filed by the respondent herein, who is estranged wife of the first petitioner, is a clear case of abuse of process of law. The learned magistrate erred in taking cognizance on the complaint, which is purely a property dispute and the same is not in accordance with law. The



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respondent herein, who is aged about 73 years, has filed the Domestic Violence complaint not only against the first petitioner/husband, who is aged about 74 years and also against the second petitioner, who is her own daughter and the the third petitioner, who is her step-son. The impugned complaint is not at all maintainable as against the second and third petitioners herein and they will not come under the purview of the definition of domestic relationship under Section 2(f) of the Protection of Women from Domestic Violence Act and also under Section 2(q) of the Act. None of the ingredients of domestic violence as envisaged under Section 3 of the Act is attracted and the same are missing and absent in the impugned Domestic Violence Case. The learned Magistrate has mechanically taken cognizance on the complaint filed under the Domestic Violence Act without going into the averments and reliefs claimed in he impugned complaint and the same was taken on file without any proper application of mind.

4. He further submitted that the first petitioner has settled his self acquired properties in favour of the petitioners 2 and 3 and in favour of other children. The respondent, who is not happy with the settlement made



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by the first petitioner in favour of the petitioners 2 and 3, at the instigation of some vested interested persons in the family, has filed the complaint to coerce the first petitioner to settle the other properties in favour of the respondent. The allegations made in the complaint does not constitute any offence under the provisions of the Protection of Women from Domestic Violence Act and hence, the complaint is liable to be quashed. There is absolutely no allegations as against the petitioners 2 & 3 and they are no way connected with the matrimonial life of the first petitioner and they are unnecessarily dragged on in the proceedings and thus, pleaded to quash the petition in DVC No.117 of 2023 pending on the file of the Sub Court for trial of Domestic Violence Act cases at Coimbatore.

5. The learned counsel for the respondent/complainant submitted that in the application, clear allegations are making out a mental torture, economic, verbal, emotional and various other forms of Domestic Violence, which are covered under the provisions of the Domestic Violence Act. The allegations have to be proved after letting evidence and at the initial stage, it is not proper to quash the complaint and this petition has no merit and needs to be dismissed and thus, pleaded to dismiss the revision petition. To



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support his contention, learned counsel for the respondent relied upon a judgment of the High Court of Bombay in ***Manu/MH/0882/2016 (xxx & ors /vs/ ABC & ors)***.

6. I have considered the matter in the light of the submissions made by the learned counsel for the parties and perused the materials available on records carefully.

7. On perusal of the material on records and the facts, it is noticed that the first petitioner married the respondent/complainant on 07.05.1975 and out of the wedlock, the 2nd respondent and two other children were born. The first petitioner also married one Devaki and she died on 03.12.1995 and through her the third respondent herein was born. According to the petitioners, the first petitioner has settled the properties in favour of the petitioners 2 and 3. The respondent, not being happy with the settlement made by the petitioners in favour of the second and third petitioners, at the instigation of another son, lodged the complaint against the revision petitioners.



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8. I have gone through the application filed by the respondent herein under Domestic Violence Act. In paragraph 10 of the application, the respondent/wife had alleged about the execution of settlement, which runs as follows:-

“ 10. The petitioner submits that the 2nd respondent and the 3rd respondent had used the petitioner's absence and obtained settlement deed in favour of them, which was executed by the first respondent without the petitioner's knowledge and consent”

I have also gone through the other allegations made in the disputed application for Domestic Violence. Those allegations are vague, general and omni bus in nature.

9. Considering the vague and general allegations raised in the application against the revision petitioners and also considering the fact that all are living separately, the allegation of mixing of poisoning in the drinking water and trespassed into the house of the complainant and looting all household articles, including 66 sovereign of jewells, according to the



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complainant is under investigation by the police. But, in the complaint, there is no date mentioned when illegally trespassed and took the household articles including 66 sovereign of jewells of the complainant by the first petitioner. The allegations in paragraph 11, 12 and 13 of the application are vague in nature.

10. Considering the age of the first petitioner/husband , i.e.74 years and the age of the respondent/wife, i.e.73 years, the contention of the petitioners, that in order to take vengeance for the settlement deed executed by the first petitioner in favour of 2nd and 3rd petitioner, the another son instigated the age old mother to file this Domestic Violence Complaint, cannot be rejected and by accepting the contention of the learned counsel for the petitioners, I find that it is a clear case of mis-use of process of law.

11. Taking into consideration the facts and circumstances of the case, no case is made out attracting Domestic Violence as defined under this Act against the petitioners and no prima facie case is made out for taking cognizance. The Trial Court erred in taking cognizance of the application under DV Act. It is clear case of abuse of process of law and hence, DVC No.117 of 2023, pending on the file of the Sub Court for trial of Domestic Violence Act cases, is to be quashed.



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WEB COPY 12. Accordingly, this Civil Revision Petition is allowed and the DVC No.117 of 2023 on the file of the Sub-Court for Trial of Domestic Violence Act is hereby quashed. Consequently, connected miscellaneous petitions are closed. No costs.

15.03.2024

Index : Yes/No
Internet : Yes/No
mrp

To

The Special Court for Trial of Domestic Violence Act Cases,
Coimbatore.

V.SIVAGNANAM,J.

mrp



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Pre-delivery order made
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