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Crl.R.C.No.1917 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.R.C.No.1917 of 2023

1. Saroja
2. Paramasivam
Vs.
... Petitioners

Sengamalam @ Pitchaipillai
... Respondent

PRAYER : Criminal Revision filed under Section 397 r/w Section 401 of the code of Criminal Procedure, 1973 to set aside the order dated 28.08.2023 passed by the learned Family Judge, Ariyalur in F.C.M.C.No.09 of 2022.

For Petitioner : Mr.S.R.Karthikeyan
For Respondent : Mr.N.Ponraj

ORDER

The present criminal revision petition has been filed to set aside the order dated 28.08.2023, passed by the learned Family Judge, Ariyalur, in F.C.M.C.No.09 of 2022.



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2. The first petitioner is the wife and the respondent is the husband. The marriage between the first petitioner and the respondent was solemnized as per the Hindu Rites and Customs Act. Out of the wedlock, two children were born. The second petitioner herein, who is a physically challenged person living along with the first petitioner. The another child, viz., Palanivel, living separately. Though the respondent has married the first petitioner, he has developed illicit relationship with one Selvi and married her and purchased the properties in the name of his second wife and the respondent has not taken care of the petitioners and is not providing any maintenance till date. Due to matrimonial dispute and misunderstanding between them, they were living separately. In the meantime, the first petitioner issued a legal notice to the respondent and demanded partition in the ancestral properties, however the respondent has not come forward to make the partition. Therefore, seeking maintenance at the hands of the respondent, the petitioners filed the petition before the Court below.

3. Before the Court below, on the side of the petitioners, P.W.1 to P.W.5 were examined and Exs.P1 to P15 and Exs.X1 to X6 were



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marked. On the side of the respondent, R.W.1 to R.W.5 were examined and Exs.R1 to R11 and Exs.X7 to X16 were marked. The Court below, based on the oral and documentary evidence, dismissed the petition stating that the petitioners are having sufficient means to maintain themselves, since the possession and enjoyment of the ancestral properties of the respondent was settled in favour of the petitioners. Aggrieved by the same, the present revision has been filed by the petitioners.

4. The learned counsel appearing for the revision petitioners submitted that the revision petitioners are not having any means to maintain themselves and that they are working 100 days in a year under Mahatma Gandhi National Rural Employment Guarantee Scheme and without appreciating the aforesaid fact, merely on the allegation of the respondent that the petitioners are in possession and enjoyment of the ancestral properties of the respondent, the Court below held that the petitioners are having sufficient means to maintain themselves and dismissed the petition, which requires to be interfered with. He further submitted that the respondent is doing the rental catering business, taxi



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business and earning a sum of Rs.1,00,000/- per month and it is the duty of the husband to maintain his wife and children.

5. The learned counsel for the respondent submitted that the petitioners filed a suit in O.S.No.198 of 1991 for the relief of partition and it was settled out of Court and the respondent gave 50% of his shares in the ancestral properties to the petitioners. Further, the respondent is providing necessary financial assistance to the business of the second petitioner. Hence, the Court below has rightly held that the petitioners are having sufficient means to maintain themselves since the possession and enjoyment of the ancestral properties of the respondent was settled in favour of the petitioners and accordingly, he prays for dismissal of the revision petition.

6. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.



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7. It is the contention of the petitioners that the petitioners have no source of income to maintain themselves. But, the respondent objected that, the petitioners already received the ancestral properties through the settlement in O.S.No.198 of 1991 and are in possession and enjoyment of the properties. Further, the respondent is providing necessary assistance to the second petitioner's business who is the physically challenged person, however, no evidence was produced before the Court below or before this Court to substantiate the same by the respondent. Though the respondent has performed second marriage with one Selvi when the first marriage with the first petitioner herein was subsisting, it is the duty of the husband to maintain his wife and the children. But the Court below, without considering all these aspects, dismissed the petition which needs to be interfered with. Hence, this Court is inclined to set aside the order passed by the Court below with the following directions:

(i) The order dated 28.08.2023 passed by the learned Family Judge, Ariyalur in F.C.M.C.No.09 of 2022 is set aside.

(ii) The respondent is directed to pay a sum of Rs.5,000/- each to the petitioners as maintenance on or before 7th of every English calendar month and also to



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deposit the arrears of maintenance to the petitioners from the date of main petition till date within a period of four weeks from the date of receipt of a copy of this order.

8. Accordingly, the Criminal Revision is allowed with the above directions.

03.04.2024

NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No

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To

The learned Judge,
Family Court,
Ariyalur.



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M.DHANDAPANI, J.

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