

Ganesan Vs. Rasammal

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Court : Chennai

Decided On : Mar-30-1994

Reported in : AIR1994Mad366

Judge : Thangamani, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 9, 24 and 28; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 115

Appeal No. : C.R.P. No. 2202 of 1993

Appellant : Ganesan

Respondent : Rasammal

Advocate for Def. : Mr. S.V. Jayaraman, Adv.

Advocate for Pet/Ap. : Mr. K. Ravichandrababu, Adv.

Judgement :

ORDER

1. Revision petitioner Ganesan is the husband of respondent-Rasammal. He filed H.M.C.P. No. 75 of 1990 in the Court of Subordinate Judge of Vridachalam under S. 9 of the Hindu Marriage Act for restitution of conjugal rights. During the pendency of the petition, the wife came forward with I.A. No. 199 of 1992 claiming interim alimony under S. 24 of the Hindu Marriage Act. The trial Court awarded Rs.

250/- per month for the wife, Rs. 75/- per month for her child and Rs. 5,00/- towards litigation expenses from 1-8-1992 by way of interim alimony. It also directed to husband to pay the money within two weeks. And this order is challenged in this revision petition

2. The wife has stated in her affidavit that she was driven out of her husband's house snatching away her jewels. She has a male child. She is leading a life of misery, in her father's house. She requires Rs. 5,00/- per month for herself and Rs. 150/- per month for her child for their sustenance. She has to be paid Rs. 1,000/- by way of litigation expenses. Her husband owns 10 acres-of garden land and he gets an income of Rs. 40,000/- per annum from those lands. Revision petitioner denies the same in his counter. Besides he states that he is handicapped to some extent and he earns only Rs. 5/- or Rs. 7/- per day. He does not own any movable or immovable properties in his name. The Court below has simply observed that the petitioner has not furnished any evidence to substantiate her plea that her husband is in possession of 10 acres of garden land and gets an income of Rs. 40,000/- per annum. It has not rendered any specific finding on the means of the revision petitioner. However, it has awarded interim alimony on the ground that whatever may be the assets possessed by the revision petitioner he is duty bound to maintain his wife and child and hence the maintenance has to be awarded.

3. Learned counsel for the revision petitioner submits that learned subordinate Judge has erred in awarding interim maintenance having found that the wife has failed to prove the means of the husband and there is not justifiable reason for passing the order. And an application for interim maintenance is not maintainable when the main O.P. is for restitution of conjugal rights filed by the husband. However, S. 24 of the Hindu Marriage Act reads that where in any proceeding under this Act it appears to the Court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay the petitioner the expenses of the proceeding and monthly, during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the Court to be reasonable. And the terms of this provision do not lend support of the

claim of the revision petitioner that no order for interim maintenance could be passed when the husband has filed an application for restitution of conjugal rights. Further it is significant to note that the amount of interim maintenance that one spouse may be ordered to pay the other must be such as appears reasonable to the Court in the exercise of its discretion and when this discretion has been exercised not arbitrarily but properly, the revision petitioner cannot have any grievance.

4. Learned counsel for the revision petitioner next placed reliance on the decision of Swamikannu, J. in *Rajambal v. Murugappan*, : AIR1985 Mad284 . There learned Judge has held that the making of an order under S. 24 is a matter of discretion with the Court. When an order under S. 24 is made by the Court, where the substantive proceeding is pending enquiry and disposal of questioned (Record) under S. 115, C.P.C., it is for the High Court to see whether the discretion vested with the trial Court had been properly exercised. An order for maintenance pendente lite and costs of the proceedings can be made in any proceeding under the Act, viz., for restitution of conjugal rights, judicial separation, divorce, etc. When the fact of marriage is acknowledged or proved alimony follows subject of course of the discretion of the Court in the matter having regard to the means of the parties. This citation far from supporting the case of revision petitioner only substantiates the contention of the wife regarding right to claim interim maintenance.

5. In the present case it does not appear that the wife has produced any substantial evidence in support of her claim that her husband owns 10 acres of garden land and gets Rs. 40,000/- per annum from the same. However, there is no categorical denial of ownership of land in the counter of the husband. The counter reads that the claim of the wife is exaggerated. It further says that the quantum of income given in the petition is far from correct. From this I am not persuaded to accept the contention of the revision petitioner that he has absolutely no means of any kind.

6. The right of a wife for maintenance is an incident of the status or estate of matrimony. In general, therefore, the husband is bound to defray the wife's costs

of any proceeding under the Act and to provide for her maintenance and support pending the disposal of such proceeding. The doctrine of alimony, which expression in its strict sense means allowance due to wife from husband or separation from certain causes, has its basis in social conditions in England under which a married woman was economically dependent and almost in a position of tutelage to the husband and was intended to secure justice to her while prosecuting or defending proceedings under matrimonial law. It is also recognised that when the wife has separate means sufficient for her defence and subsistence she should not be entitled to alimony nor costs during the proceeding; and if the husband has neither property nor earning capacity the Court would not award any interim alimony. It is on these principles that the law relating to matrimonial causes provides rules for payment of maintenance pendente lite and expenses of proceedings by the husband of the wife. This section adopts those principles and goes one radical step further when it lays down that any such order can be made not only in favour of the wife but also in favour of the husband. Any decision under the present section on the subject of alimony must necessarily turn on the circumstances of each case and not fixed rules can be expected on the question. And considering the fact that the present respondent has no wherewithal to support her, it cannot be said that the discretion vested with the trial Court had not been properly exercised.

7. Learned counsel for the revision petitioner has placed reliance on two more decisions. In *Shakuntala v. Amar Nath*, AIR 1978 P&H; 32 the trial Court fixed the maintenance allowance of the petitioner at Rs. 30/- per mensem and litigation expenses payable to her at Rs. 125/- under S. 24 of the Hindu Marriage Act. That order was set aside by the High Court on the short ground that the trial Court has not given any reasons for its conclusions. The trial Judge has neither referred to any affidavit or counter-affidavit of the parties; nor has she stated that she believes or disbelieves, or partially believes or disbelieves any of the affidavits or any evidence led by the parties. An order of that type, which does not contain either the facts or the grounds on which it is based is no order in the eye of law. In *Satish Bindra v. Surjit Singh*, the point involved was whether the order passed by the trial Court under S. 24 of the Hindu Marriage Act was appealable under S. 28 thereof, and, therefore, the revision petition could be entertained. And on merits ii found

that the trial Court has not passed any order in accordance with law on the application of the petitioner. If the averments of the petitioner contained in her affidavit were not considered enough, she should have been afforded an Opportunity to give supplementary affidavit or affidavits on any point required by the Court or is the Court so required even to lead evidence in the course of a summary inquiry, at the end of which proper order should have been passed. Since the order was not supported by any reason and did not discuss the pros and cons of the rival versions of the parties relating to the quantum of income of the husband, it had to be set aside. Needless to say that these two decisions cannot come to the rescue of the revision petitioner. I therefore, find no merit in this civil revisio; petition.

8. In the result, the civil revision petition is dismissed. No costs.

9. Petition dismissed.

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