

Ammasi Vs. Tmt. Amaravathi and Another

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Court : Chennai

Decided On : Nov-07-1996

Reported in : 1997CriLJ2963

Judge : M. Karpagavinayagam, J.

Appeal No. : Cri R.C. No. 58 of 1995

Appellant : Ammasi

Respondent : Tmt. Amaravathi and Another

Advocate for Def. : K. Sakthivel, Adv.

Advocate for Pet/Ap. : K.V. Sridharan, Adv.

Judgement :

ORDER

1. The order granting maintenance passed in R.C. No. 21 of 1992 on the file of the Sessions Judge, Dindigul, on the averments filed by the wife against the order dismissing her claim in M.C. No. 8 of 1990 on the file of the Judicial Magistrate, Nilakottai, is challenged in this revision by the husband.

2. On behalf of the wife before the lower Court, four witnesses were examined and Exs. P.I. to P. 7 were filed. On behalf of the husband/petitioner witnesses R.W. 1 the husband and R.Ws. 2 to 5 were examined. Exs. R. 1 to R. 8 were marked.

3. The case of the wife before the lower Court is that she was deserted by the husband after the child was born. Admittedly, the husband/petitioner is working in an army. To prove her case, the witnesses examined on behalf of the wife would speak about the marriage and the birth of the child. But the case of the husband through his witnesses that the child was not born to him and the wife was living in adultery with one Govindaraju. On consideration of the entire evidence, oral and documentary, the lower Court came to the conclusion that the wife and the child were not entitled to maintenance, since the wife was living in adultery with Govindaraju.

4. Aggrieved over this order, revision was preferred by the wife, which was allowed by the revisional Court holding that both the wife and child are entitled to maintenance. Hence the revision is filed by the husband.

5. The only point that has been urged in this revision by Mr. K. V. Sridharan, counsel for the petitioner is that the Sessions Court committed the serious illegality in not construing the oral evidence adduced by R.W. 1 to R.W. 5 and merely considered some document filed by both the parties and came to the conclusion that the wife and child were not entitled to maintenance. According to him, the Sessions Court ought not have compared the photo Ex. P. 7 with Ex. R. 1 photo to hold that this is a fabricated document in the absence of any evidence through negative. Per contra, Mr. K. Sakthivel, learned counsel appearing for the respondents/wife and child contended that the documents which have been considered by the revision Court was completely contra to the oral evidence and so the revision Court was correct in holding that both the wife and child were entitled to maintenance.

6. The revision has to be allowed in so far as the award of maintenance to wife is concerned on the following reason. The consistent evidence let in by R. Ws. 1 to 5 that the wife was living in adultery from the year 1979 till the date of deposition. The trial Court has given elaborate reasons to come to the conclusion that their evidence is acceptable. Admittedly, the revision Court has not considered the evidence of R.Ws. 1 to 5, instead, merely on consideration of the documentary evidence, the Sessions Court has taken out a view from that of the Magistrate,

which according to him is not permissible under law. So, I feel that the order of the Sessions Court awarding maintenance of Rs. 500/- per mensem to the wife, which suffers with the above referred to infirmity is liable to be set aside. So, the revision is allowed in part as far as wife is concerned.

7. With regard to the child, as correctly pointed out by the Sessions Court and as factually submitted by the learned counsel for the respondents that there is no evidence let in on the side of the husband that the child was born to the wife through the said Govindaraju. In fact, a reading of the judgment of the District Court would reveal that after the birth of the child, the husband wrote to the wife in the year 1978 and in 1979 through Exs. P. 2 and P. 1 enquiring about the health of his wife and child. Subsequently, on finding Ex. R. 1 photo in the suit case belonging to the wife, which contains a photo of his wife with the said Govindaraju, the husband merely entertained suspicion that the child would have been born to him. Mere suspicion will not take the place of proof, unless it is proved by the husband that the child was not born to him, it cannot be contended that the child was not entitled to maintenance. (sic) So, I entirely agree with the findings given by the District Court, with regard to that aspect holding that the child was born to the petitioner/husband. So, I see no reason to interfere with the order of the District Court in so far as the maintenance awarded to the child and so I confirm the order of maintenance to the child holding that the child is entitled to maintenance from the date of the application filed before the lower Court. With this observation, the revision is allowed in part.

8. Revision partly allowed.