

Chelladurai Vs. Maniammal and anr.

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Court : Chennai

Decided On : Jul-26-1996

Reported in : II(1996)DMC493

Judge : M. Karpagavinayagam, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125

Appeal No. : Cri. R.C. No. 577 of 1993

Appellant : Chelladurai

Respondent : Maniammal and anr.

Advocate for Def. : J. Thooyamani, Adv.

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

Disposition : Revision dismissed

Judgement :

M. Karpagavinayagam, J.

1. This is a revision preferred by the husband Chelladurai, against the order dated 11.11.1992 in Cri. R.C. No. 8 of 1991, on the file of the Sessions Court, Nagapattinam, granting maintenance of Rs. 150/- p.m. to the wife and Rs. 100/- p.m. to the minor son, by setting aside the order made in M.C. No. 191 of 1983 on

31.5.1991 by the Judicial Magistrate No. 1, Mayiladuthurai, dismissing the maintenance petition filed by the wife Maniammal.

2. The facts of the case are as follows :

The marriage between the petitioner/husband Chelladurai and the 1st respondent herein/wife Maniammal, was solemnised under Hindu rites in the year 1970. In 1980, the 2nd respondent, Sundararasan was born to them. Therefore, the husband/petitioner did not maintain the wife and child properly and gave troubles to them. Ultimately, both wife and child were driven out of the house. On 2.6.1983, the petitioner/husband married one Kalaichelvi as his second wife. The yearly income for the husband/petitioner is about Rs. 8,000/-. So, under these circumstances, the wife filed a petition for maintenance, claiming Rs. 300/- per month for herself and Rs. 150/- for the minor son Sundararasan.

3. This petition was contested by the husband/petitioner herein by filing a counter. He resisted the petition for maintenance by stating that she was not the wife and that the child was not born to him.

4. On behalf of the wife, two witnesses were examined. The wife was examined as P.W. 1 and one Thiruvengadam was examined as P.W. 2, through the witnesses, Exs. P1 to P5 were marked. On behalf of the husband, he alone was examined as R.W. 1. However, the learned Judicial Magistrate, dismissed the petition for maintenance, holding that the marriage, as well as the paternity of the child was not proved. Aggrieved over this, the wife and the minor child filed a revision before the Sessions Court, and contended that the various materials adduced by the wife to prove the marriage and paternity have been over-looked by the Magistrate, while dismissing the petition for maintenance.

5. After hearing both the parties, the Sessions Judge allowed the appeal by awarding the maintenance of Rs. 150/-p.m. to the wife and Rs. 100/-p.m., to the minor son, to be paid by the husband from the date of the maintenance petition. Hence this revision by the petitioner/husband.

6. The agonising factor in this case is that when this Court admitted this revision, passed a conditional order of stay, after hearing both the parties and on the undertaking given by the husband/petitioner that the petitioner would deposit 40% of the total arrears of Rs. 30,000/- within a period of eight weeks. But unfortunately, though this order was passed on 10.9.1993, the husband/petitioner did not comply with the order. Now in the year of 1996, this revision has come up for final disposal.

7. Coming to the merits of the case, I feel that there is no justification to interfere with the order of the Sessions Court, granting maintenance to the respondents herein. To prove the marriage through P.W. 1 evidence has been let in. This has been corroborated by P.W. 2. Ex. P1, ration card shows that the petitioner and the 1st respondent are the husband and wife and the 2nd respondent is their child. Ex. P3 is the birth certificate, which shows that the child was born on 20.5.1980. It was argued on behalf of the husband /petitioner that even, according to the wife, they were living as husband and wife only upto January 1980, but the child was born in May, 1980, and so, it cannot be contended that the child was born to him. Rightly, this argument was rejected by the Sessions Court, holding that till January, 1980, wife lived with her husband, the petitioner herein and within five months, she gave birth to a child and so the child must have been born only to the petitioner herein. Ex. P2 - Voters list also shows that the petitioner and the 1st respondent were husband and wife. On the basis of these materials, i.e. the evidence of P. Ws. 1 and 2 and the documents Exs. P1 to P5, the Sessions Court rightly came to the conclusion that the marriage between the petitioner and the 1st respondent herein and the paternity of the child were proved.

8. It is contended by the learned Counsel for the petitioner, by citing the decision reported in 1986 S.C.C. 212 that in the revision, the Sessions Court cannot reassess the evidence and come to a different conclusion from that of the conclusion arrived at by the Trial Court. With regard to this proposition, there is no dispute. But, in this case, the materials adduced by the wife to prove her case have not been considered and rather overlooked by the Judicial Magistrate due to which there is a flagrant miscarriage of justice.

9. So, in view of the above reasonings, I am of the view that the Sessions Court is right in awarding the maintenance of Rs. 150/- p.m. to the wife and Rs. 100/- p.m. to the minor son from the date of petition for maintenance. In that view of the matter, the revision filed by the husband/petitioner has no merits and deserves to be dismissed. Accordingly the revision is dismissed.

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