

A. Dhanapal Vs. K. Senthamarai

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Court : Chennai

Decided On : Aug-28-2012

Judge : The Honourable Mrs. Justice R. Banumathi & R. Subbiah

Appeal No. : M.P. No. 1 & 2 of 2012 & M.P. No. 3 of 2012 in C.M.A. No. 1227 of 2012

Appellant : A. Dhanapal

Respondent : K. Senthamarai

Advocate for Pet/Ap. : For the Petitioner: T. Karunakaran, Advocate. For the Respondent: S. Jeevanandham, Advocate.

Judgement :

R. Banumathi, J.

1. M.P.No.1 of 2012 is filed by the Appellant seeking interim stay of order in I.A.No.919 of 2012 in O.S.No.250 of 2011 dated 31.03.2012 on the file of I Additional Family Court, Chennai.

2. M.P.No.2 of 2012 is filed by the Respondents 1 to 4 to vacate the stay granted on 25.4.2012 in M.P.No.1 of 2012 in C.M.A.No.1227 of 2012.

3. Marriage between the Appellant-Dhanapal @ Kalidass Manickam and the 1st Respondent-Senthamarai was solemnised on 14.6.1981 and from of the lawful

wedlock three daughters viz., Respondents 2 to 4 were born. Appellant was working as Bill Collector in Namakkal Municipality and retired on superannuation on 31.03.2012. Stating that Appellant neglected to take care of the family, Respondents 1 to 4 have filed M.C.No.494 of 2011 on the file of I Additional Family Court, Chennai claiming maintenance of Rs.5000/- per month to each of the Respondents and the said Maintenance Case is pending.

4. Respondents 1 to 4 have also filed suit in O.S.No.250 of 2011 on the file of I Additional Family Court, Chennai for (i) declaration that the 1st Respondent is the legally wedded wife of the Appellant to enable her to receive family pension and service benefits and also to declare that the Respondents 2 to 4 as the legal daughters of the Appellant and (ii) permanent injunction restraining the Municipal Commissioner, Namakkal Municipality and other Government officials from disbursing the service benefits to the Appellant till the disposal of M.C.No.494 of 2011 pending on the file of I Additional Family Court, Chennai.

5. In the said suit O.S.No.250 of 2011, Respondents 1 to 4 have filed I.A.No.919 of 2012 seeking for interim injunction restraining the Municipal Commissioner, Namakkal Municipality and other Government officials from disbursing the retirement and service benefits to the Appellant pending disposal of M.C.No.494 of 2011. Appellant resisted I.A.No.919 of 2012 contending that he had appointed the 1st Respondent as nominee in his Service Register and 1st Respondent is entitled to get retirement and service benefits only after the death of the Appellant and that Respondents 1 to 4 are not entitled to seek interim injunction. In the counter, Appellant also interalia raised objection as to the maintainability of the suit in the Family Court, Chennai.

6. In I.A.No.919 of 2012, I Additional Family Court, Chennai held that the issue regarding jurisdiction of Court has to be determined as preliminary issue only in the suit. Family Court held that on the facts and circumstances of the case, Respondents 1 to 4 have proved prima facie case and that the balance of convenience lies infavour of the Respondents 1 to 4 and by the order dated 31.3.2012, granted interim injunction. Challenging the said order, Appellant preferred C.M.A.No.1227 of 2012. Along with the appeal, Appellant filed M.P.No.1

of 2012 for stay of the order in I.A.No.919 of 2012 dated 31.03.2012 in O.S.No.250 of 2011. By the order dated 25.4.2012, Bench granted "interim stay".

7. Respondents 1 to 4 have filed M.P.No.2 of 2012 to vacate the interim stay granted on 25.4.2012 in M.P.No.1 of 2012 in C.M.A.No.1227 of 2012. In the supporting affidavit, it is averred that Appellant is having illegal relationship with one Shanthi and living with her and also Appellant took away 35 sovereigns of gold from the possession of the Respondents 1 to 4. It is further averred that if the Appellant withdraws the retirement benefits, there will be no way to recover the amount from him towards maintenance.

8. Appellant filed M.P.No.3 of 2012 seeking permission to amend the averments stated in the affidavit in M.P.No.1 of 2012 stating that the counter prepared and propose to be filed in M.C.No.494 of 2011 was mistakenly incorporated in the affidavit averments in M.P.No.1 of 2012 and sought for amendment. By the order dated 24.8.2012, the clean copy of the affidavit containing correct averments was ordered to be received.

9. Heard Mr.T.Karunakaran, learned counsel appearing for the Appellant. We have also heard Mr.S.Jeevanandham, learned counsel for Respondents 1 to 4.

10. Learned counsel for Appellant contended that in the Service Register of the Appellant, 1st Respondent has been shown as nominee and she is entitled to receive pension and other benefits only after the death of the Appellant. It was further contended that Civil Court is not having right to attach the retirement and service benefits. In support of his contention, learned counsel for Appellant placed reliance upon 2004-1-Law Weekly 125 (Sathyabama and others v. M.Palanisamy and others) and 2009-3-Law Weekly 369 (Annis Anandhi and others v. Kanaga and another). Learned counsel would further contend that the Family Court misconstrued that the above decisions are infavour of the Respondents 1 to 4.

11. Reiterating the averments in vacate stay petition, learned counsel for Respondents 1 to 4 contended that 1st Respondent celebrated the marriage of her first daughter and that the other two daughters are also grown up and that their marriages are to be performed in the near future.

12. Admittedly, Appellant retired on 31.3.2012 and he had withdrawn part of his retirement benefits. Maintenance Claim filed by the Respondents in M.C.No.494 of 2011 is pending. It is also admitted that the couple are having two unmarried daughters of which one daughter is said to be employed. Respondents 1 to 4 are sustain themselves and also make preparation for solemnisation of marriage. If Appellant withdraws his entire retirement and service benefits in case if the Respondents 1 to 4 succeeds later, they will not be in a position to recover any amount from the Appellant towards maintenance or for solemnisation of marriage of Respondents 3 and 4. At this stage, Court has to consider only the prima facie case and balance of convenience.

13. Considering the facts and circumstances of the case and the plight of Respondents 1 to 4, Family Court has rightly granted the interim injunction in I.A.No.919 of 2012 in O.S.No.250 of 2011 and we do not find any improper exercise of discretion warranting interference.

14. In the result, M.P.No.2 of 2012 in C.M.A.No.1227 of 2012 filed by the Respondents 1 to 4 is allowed and the interim stay granted on 25.4.2012 in M.P.No.1 of 2012 in C.M.A.No.1227 of 2012 stands vacated. M.P.No.1 of 2012 filed by the Appellant is dismissed. M.P.No.3 of 2012 is closed. No costs.

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