

R. Saravanan Vs. Pavathal

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Court : Chennai

Decided On : Oct-12-2012

Reported in : 2012(4)MLJ(CrI)651

Judge : C.S. Karnan

Appeal No. : CrI.R.C.No.146 of 2009 & M.P.Nos.1 and 2 of 2009

Appellant : R. Saravanan

Respondent : Pavathal

Advocate for Pet/Ap. : For the Petitioner: V. Bharathidasan, Advocate. For the Respondent: R. Marudhachalamurthy, Advocate.

Judgement :

(PRAYER : Criminal Revision is filed under Sections 397 and 401 of Cr.P.C., to set-aside the judgment passed in C.A.No.117 of 2008, on the file of Additional District Court-cum-Fast Track Court-I, Erode, dated 19.11.2008 against CrI.M.P.No.729 of 2007 on the file of District Munsif-cum-Judicial Magistrate Court, Kodumudi, Erode District, 28.01.2008.)

The revision petitioner / appellant / respondent has preferred the present revision in CrI.R.C.No.146 of 2009 against the judgment passed in C.A.No.117 of 2008, on the file of Additional District Court-cum-Fast Track Court-I, Erode, dated 19.11.2008 against CrI.M.P.No.729 of 2007 on the file of District Munsif-cum-

Judicial Magistrate Court, Kodumudi, Erode District, 28.01.2008.

2. The short facts of the case are as follows:-

The petitioner / mother had filed a petition in Crl.M.P.No.729 of 2007 before the District Munsif-cum-Judicial Magistrate Court, Kodumudi, Erode District against the respondent / son. It was submitted that the respondent had neglected to maintain the petitioner in her old age and had stopped providing any monetary assistance and had driven the petitioner out of the house. The respondent had not provided even the basic necessities to the petitioner to lead her life. Hence, the petitioner has filed a petition praying for protection to her from Domestic Violence as per Section 12 and 23 of Protection of Women from Domestic Violence Act, 2005.

3. The respondent in his counter had submitted that he is an agriculturist and that he had taken a loan of Rs.20,000/- from the Proprietor of Murugan Rice Mill, Ganapathypalayam and had also taken a loan from the Primary Agricultural Co-operative Bank and conducting agricultural business. He submitted that he had incurred a loss in the agriculture business. He had submitted that the petitioner in order to usurp the property of the respondent in order to hand it over to her daughter, is functioning in a vindictive manner. He submitted that the petitioner had sold the land in Survey No.281, an extent of 47 cents and given the sale consideration of Rs.61,900/- obtained to her daughter. He had also submitted that the petitioner had given a complaint against him at the police station and the said case is pending. It was submitted that the respondent finds it difficult to maintain himself. It was submitted that as he had objected to filing of complaint by the petitioner and had asked to set-aside the said complaint, the petitioner had filed the present petition. He had prayed for dismissal of the petition.

4. The trial Court, after perusal of the oral and documentary evidence allowed the said petition and directed the respondent to allot a portion in his house to enable the petitioner to reside there and that the respondent should take care of all her necessities. It was further ordered that the respondent does not have any right to send her out of the house which is a joint property.

5. Aggrieved by the order passed in Crl.M.P.No.729 of 2007, the respondent had preferred an appeal in C.A.No.117 of 2008, before the file of Additional District Court-cum-Fast Track Court-I, Erode. It was argued in the appeal that the trial Court had earlier ordered the appellant to pay a monthly maintenance of Rs.1,000/- to the respondent and that an appeal was filed against the said order of maintenance and that the trial Court's order was confirmed by the appellate Court. As such, it was argued that the trial Court erred in allowing another petition filed by the respondent. It was contended that the trial Court failed to see that the respondent had already sold her property. It was contended that a original suit in O.S.No.118 of 2006 is pending before the Sub Court, Erode and that Rasianna Gounder had left a Will dated 19.02.2001 regarding property. It was contended that the trial Court without scrutinising these documents and without taking into account that the respondents house is a self-earned one had passed unilateral order and hence the petition should be dismissed.

6. The learned judge observed that initially the respondent, appellant and the respondent's husband were staying in the same house and after the demise of the respondent's husband, the respondent had lived in the same house with the appellant for six months. It is contended that subsequent to this the appellant / son had driven the respondent / mother from out of the house. The appellant had submitted that the respondent, on the advice of his sister and sister's husband, had voluntarily left the house. In the trial Court, on the side of the respondent / petitioner, two witnesses were examined and on the side of the appellant / respondent, one witness was examined. It is seen that the respondent and her daughter had filed a case against the appellant for partition of the house, as it is contended that there is a Will bequeathing the property to the appellant. It is seen that the house tax receipts are in the name of the respondent / mother. The appellant was also examined. The learned judge observed that the respondent is at present not staying in the house purchased by her husband but is residing separately. The learned judge observed that no documents had been produced on either side to show the reasons for the respondent not living in her husband's place and no evidence is available to show whether she had done it of her free will or whether the appellant had driven her out. The learned judge opined that the appellant could in no way prevent the respondent from staying in her husband's

place and should not create any disturbance to her while residing in the property. It was also admitted on both sides that the appellant has been giving a monthly maintenance of Rs.1,000/- to the respondent. Hence, the learned judge held that the respondent should be allowed to reside in a portion of the said house. Hence, the learned judge dismissed the appeal and confirmed the order of the trial Court.

7. Aggrieved by the order passed by the appellate Court, the appellant has preferred the present revision.

8. The learned counsel for the revision petitioner has contended that the Courts below failed to note that the respondent has filed M.C.No.9 of 2006, on the file of District Munsif cum Judicial magistrate, Kodumudi for maintenance and the same has been ordered for Rs.1,000/- per month by order dated 28.06.2007 and that this includes shelter and other maintenance. It was contended that in view of the order passed in M.C.No.9 of 2006, dated 28.06.2007, the present petition filed in Crl.M.P.No.729 of 2007 is not maintainable. It was pointed that the Courts below failed to appreciate that the respondent has sold her house and doing money lending business. It was pointed out that the Courts below failed to see that the house belongs to the petitioner exclusively and therefore, there is no question of accommodating the respondent. It was contended that the Courts below ought to have seen that in view of the civil suit filed by the respondent in O.S.No.188 of 2006, the application ought not to have been entertained. It was contended that the Courts below have failed to appreciate that Section 12 of the Protection of Women from Domestic Violence Act, 2005, as well as the other provisions of the Act, would not apply for getting an entry into the house of the petitioner.

9. The learned counsel for the respondent argued that the relation between petitioner and respondent is son and mother. The respondent is aged about 63 years. The revision petitioner herein is the biological son of the respondent. As such, he has to take necessary care on her. But the revision petitioner has deliberately failed to do his duty to the revision petitioner herein. The learned counsel further submitted that the respondent has not claimed any rights over the property but has only sought accommodation. Further, the case has been filed under Section 2 of Protection of Women from Domestic Violence Act. As such, the

respondent has not claimed any title over the property.

10. On verifying the facts and circumstances of the case and on arguments advanced by the learned counsel on either side and on perusing the impugned order of the learned Magistrate, this Court does not find any discrepancy in the said order.

11. Resultantly, the revision is dismissed. Consequently, the judgment passed in C.A.No.117 of 2008, on the file of Additional District Court-cum-Fast Track Court-I, Erode, dated 19.11.2008 confirming the order passed in CrI.M.P.No.729 of 2007 on the file of District Munsif-cum-Judicial Magistrate Court, Kodumudi, Erode District, 28.01.2008 is confirmed. Consequently, connected miscellaneous petitions are closed. Accordingly ordered.

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