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Madras High Court

Case No: Criminal Revision Case No. 326 of 2001

Subbulakshmi APPELLANT

Vs

Sivasubramaniam RESPONDENT

Date of Decision: Nov. 11, 2002

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 125

Hon'ble Judges: P. Sathasivam, J

Bench: Single Bench

Advocate: M.M. Sundaresh, for the Appellant; K. Kalyanasundaram, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

P. Sathasivam

1. Aggrieved by the order of dismissal of her petition-M.C.No.1 of 1995 on the file of the District Munsif-cum-Judicial Magistrate, Perundurai, wife has filed the above Revision. She filed the said petition u/s 125, Cr.P.C. claiming maintenance at the rate of Rs.1,000/- per month from the date of petition. The said claim was resisted by the respondent. The learned District Munsif-cum-Judicial Magistrate, after holding that there was no valid marriage between the petitioner and the respondent and in the absence of acceptable evidence, dismissed her petition for maintenance; hence the present Revision.

2. Heard the learned counsel for the petitioner as well as respondent.

3. The point for consideration in this Revision is whether there was a marriage between the petitioner and the respondent in 1971 as claimed by the petitioner, and if so, what is the quantum of maintenance payable to her?

4. Before the Court below the petitioner herself was examined as P.W.1, her father Kittappa Gounder as P.W.2 and one Ponnusamy, who is said to have attended the

marriage of the petitioner and the respondent, as P.W.3. She also produced and marked Exs. P-1 to P-6 in support of her claim for maintenance. On the other hand, the respondent was examined as R.W.1 and one Kandasamy as R.W.2. Exs. R-1 to R-4 were marked in support of his defence.

5. It is the case of the petitioner that in 1971 marriage between herself and the respondent was solemnized at Bhavani according to Hindu rites in the presence of relatives and well wishers. She deposed that pursuant to the marriage, a female child was born to them on 10-7-1972. As her husband ill-treated her and after the marriage of her daughter, he continued his ill-treatment, and drove her out from the house in 1993, she was constrained to file the said petition claiming maintenance. Apart from her evidence, to establish that there was a marriage between herself and the respondent in 1971, her father was examined as P.W.2, and one Ponnusamy who attended the marriage as P.W.3. On the other hand, it is the case of the respondent that there was no marriage between himself and the petitioner. It is seen from the evidence of R.W.1 and R.W.2 that P.W.1 was kept as his (R.W.1"s) mistress and no marriage was performed as claimed by the petitioner. According to them, in view of Ex.R-1 Registered Settlement deed dated 25-6-73-; and Ex.R-2 Registered Release deed dated 25-6-73, executed by the petitioner, the latter cannot claim maintenance and the petition is liable to be dismissed.

6. In the light of the rival claim and taking note of the fact that the procedure contemplated for deciding the petition filed u/s 125 Cr.P.C. is summary in nature, I have considered the oral and documentary evidence let in by both parties. As rightly observed by the Court below, except the oral evidence of P.Ws.1,2 and 3, no other tangible evidence either in the form of oral or documentary was placed before the Court to substantiate her marriage with the respondent in 1971. On the other hand, she has admitted that the respondent"s name does not find a place either in the Family Card or in the Voters" List. No doubt, the name of the respondent has been mentioned in Ex.P-1-Marriage Invitation of the daughter of the petitioner and Ex.P-2, Transfer Certificate of her daughter. As rightly observed by the Court below, merely because there is a reference as to his name in Ex.P-1, marriage invitation of her daughter, it cannot be presumed that there was a marriage between the petitioner and the respondent in 1971. Admittedly, in Ex.P-2, the petitioner alone has signed and except his name being mentioned therein, he has not put his signature. No doubt, the petitioner has pressed into service Exs. P-5 and P-6. Ex. P-5 is the proceedings of the Tahsildar wherein it is seen that the petitioner had applied for to avail certain benefits initiated by the Government of Tamil Nadu intended for Destitute women. Ex. P-6 is the copy of the proceedings issued by the Tahsildar. Here again, as rightly observed by the Court below, after going through Exs. P-5 and P-6 and considering the fact that her application, the enquiry and the ultimate order were passed on the same day, the veracity or genuineness of the said certificate is highly doubtful.

7. It is relevant to refer the two documents heavily relied on by the respondent, namely, Ex. R-1 Registered Settlement deed dated 25-6-73 and Ex.R-2 Registered Release deed dated 25-6-73. Apart from the fact that the petitioner and the respondent are parties to the

document, the father of the petitioner (P.W.2) and the attestor of Exs. R-1 and R-2 (R.W.2) explained the contents of the same before the Court below. A perusal of Ex. R-1 shows that the petitioner has been described as concubine (mgpkhd kidtp) and there is a specific reference that no marriage had taken place (tpthfk; ,y;iy). I have already referred to the fact that the said document (Settlement deed) has been attested by P.W.2 and R.W.2. R.W.2 has specifically stated that marriage had not taken place between the petitioner and the respondent. However, it is stated that since P.W.1 was kept as his (R.W.1"s) mistress and considering her grievance expressed, Ex. R-1 came to be executed by R.W.1, giving two acres of land in lieu of her maintenance and other claims. It is also relevent to refer the other document Ex.R-2 - Release deed dated 25-6-73. It is also a Registered document wherein P.W.1 had expressed that she was not willing to continue as his concubine and by executing Ex. R-2, she relinquished her right of wife, if any. P.W.2 and R.W.2 are attestors of Ex.R-2. They also explained the contents of both the documents. As rightly pointed out by the learned counsel for the respondent, in the light of Exs. R-1 and R-2, registered settlement deed and registered release deed and in view of Section 92 of the Indian Evidence Act, neither P.W.1 nor P.W.2 can be permitted to claim differently going go by to those documents.

8. No doubt, learned counsel for the petitioner, by relying on decisions in (1) Saudamini Dei Vs. Bhagirathi Raj, ; (2) Makhan Singh v. Kamlabai 1996 (1) Crimes 317 (H.C); and (3) Dwarika Prasad Satpathy Vs. Bidyut Praya Dixit and Another, , would contend that for the limited purpose of Section 125, Cr.P.C., it may be inferred that there was a marriage. There is no dispute regarding the proposition laid down in those decisions. I am also aware of the fact that the validity of the marriage for the purpose of summary proceedings u/s 125 Cr.P.C. is to be determined on the basis of the evidence brought on record by the parties. It is also settled law that with regard to the performance of marriage in proceedings u/s 125 Cr.P.C., which are of a summary nature, strict proof of performance of essential rites is not required. However, from the materials produced by the petitioner, I am in agreement with the conclusion arrived at by the Court below. I have already referred to the contents of Exs. R-1 and R-2 and the specific evidence with reference to those documents by R.W.2, one of the attestors of those documents. Having agreed to that the petitioner was not married to the respondent, she cannot be permitted to urge differently for the purpose of claiming maintenance. Though the procedure for claiming maintenance u/s 125 Cr.P.C. is summary in nature, undoubtedly, the claimant/petitioner has to prove the marriage between her and the respondent. In this regard, I am in respectful agreement with the view expressed by A.K. Rajan, J., in Crl.Revision Case No. 1141 of 1999 (Kandasamy Gounder vs. Palaniammal and another) dated 8-8-2002 wherein the learned Judge has held that the party who approaches the Court claiming maintenance has to prove that there was a marriage between the claimant and the respondent.

9. In the light of what is stated above, I am in agreement with the conclusion arrived at by the Court below and I do not find any error or infirmity for interference. Accordingly, the

Criminal Revision fails and the same is dismissed. It is made clear that since the order under challenge has been made on a petition filed u/s 125, Cr.P.C., if any order or decree as to declaration of status between the petitioner and the respondent is passed in a Civil Court, the same shall prevail over the order passed by the Criminal Court.