

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.03.2023

PRONOUNCED ON: 21.04.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CrI.R.C.No.291 of 2022

and

CrI.M.P.Nos.3028 & 9397 of 2022

| | | |
|-----------|------|------------|
| Annadurai | ... | Petitioner |
| | /vs/ | |
| Jaya | ... | Respondent |

PRAYER : Criminal Revision Case has been filed under Sections 397 read with 401 of Code of Criminal Procedure to allow the above criminal revision case by setting aside the fair and decretal order dated 23.11.2021 passed in CMP No.2529/2021 in M.C.No.1 of 2014 on the file of the Judicial Magistrate Court No.II, Madurantagam.

For Petitioner ... Mr.K.Govi Ganesan

For Respondent ... R.Amburaj

ORDER

Challenging the impugned order dated 23.11.2021 passed in CMP No.2529 of 2021 in M.C.No.1 of 2014 by the learned Judicial Magistrate No.II, Madurantagam, the present criminal revision case has been filed.

2.The fact of the case is that the petitioner is the husband. The respondent is the mother-in-law of the petitioner. The petitioner married the respondent's daughter Saraswathi in the year 1991. Due to misunderstanding, they separated. The petitioner/ husband by filing a divorce petition under Section 13 (1)(i) (b) of Hindu Marriage Act before the Sub Court, Seyyur, got a divorce decree by an order dated 20.01.2005. Thereafter, Saraswathi filed a maintenance case in M.C.No.1 of 2014 before the Judicial Magistrate No.II, Madurantagam. After trial of the maintenance case, the learned Judge awarded a monthly maintenance of Rs.7,500/- payable by the petitioner/husband to his wife Saraswathi on 22.01.2021 and the amount was ordered to pay from the date of petition i.e. on 04.01.2014. Thereafter, his wife Saraswathi filed a maintenance application in M.C.No.1 of 2014 and got maintenance order.

For collecting the arrears of maintenance, the wife Saraswathi filed an application in CMP.No.678 of 2021 in M.C.No.1 of 2014 before the Judicial Magistrate No.II, Maduranthagam. In the petition, she claimed the arrears of maintenance amount of Rs.6,37,500/-. Pending petition, the wife Saraswathi died on 05.06.2021. Thereafter, her mother filed CMP.No.2529 of 2021 to implead her as a petitioner and to permit her to recover the arrears of maintenance amount of Rs.6,22,500/-. The learned Judge, after hearing both the parties, allowed the petition for impleading the mother-in-law of the petitioner as petitioner for collecting the arrears of maintenance amount of Rs.6,22,500/- on the ground that she all along acted as a guardian to the deceased wife Saraswathi as she was mentally affected and also a legal heir to the deceased daughter. Aggrieved by this order, the petitioner/husband filed the present criminal revision case, which is under challenge.

3.The learned counsel for the petitioner would submit that the relationship of the parties is not disputed. The wife Saraswathi, who is the petitioner in the maintenance case, died on 05.06.2021. The maintenance is the personal right of the petitioner's wife. On her death, that right

extinguished, no cause of action has survived. Since the right to claim maintenance would not have survived on her death, her mother is not competent to continue the proceedings and not entitled to claim arrears of maintenance from the husband of the deceased her daughter. Therefore, the respondent mother-in-law would not be impleaded in the place of his wife Saraswathi to collect the arrears of maintenance. Hence, the impugned order is unsustainable and it is to be set aside and the criminal revision case has to be allowed.

4. In support of his argument, the learned counsel for the petitioner has relied upon the judgments in (i) *Giribala Debi Vs. Nirmalabala Debi (AIR(CAL)- 1935-0-578*, (ii) *Pandharinath Sakharam Thube Vs. Surekha Pandharinath Thube (CRLJ-1999-0-2919)*, (iii) *Sangeeta Kumari Show Vs. State of West Bengal (CALLT-2006-2-64)*, (iv) *the judgment of this Court dated 29.11.2021 in A.S.No.648 of 2018 (Thiyagarajan and three others Vs. S.Poomathi and three others) and (v) Arunachala Gounder (Dead) by Lrs. Vs. Ponnusamy and others (2022 SCC Online SC 72)*.

5.The learned counsel appearing for the respondent would submit that in this case, a maintenance decree is passed by the learned Judicial Magistrate No.II, Maduranthagam in M.C.No.1 of 2014 and recognised the wife's right of maintenance and also ascertained the monthly maintenance of Rs.7,500/-. The arrears amounts are the asset of the wife. The petitioner/husband by divorce decree in HMOP No.52 of 2000 dated 20.01.2005 is not a legal heir to his ex-wife. Since the marriage itself gets dissolved the status of spouses gets changed and they become ex-husband and ex-wife as a result of such a decree of divorce, the marriage tie is snapped. Therefore, by virtue of Hindu Succession Act, Section 15(i)(c), the mother is a successor to her deceased daughter in the absence of sons and daughters (including the children of any pre deceased son or daughter). Therefore, the respondent mother-in-law is a legal heir to her deceased daughter and she is competent to receive the arrears of maintenance till the death of her daughter and there is no reason to interfere with the impugned order.

6.To support of his argument, the learned counsel for the respondent relied upon the judgment of the Hon'ble Supreme Court in ***Melepurath Sankunni Ezhuthassan Vs. Thekittil Gopalankutty Nair (1986 AIR 411)*** and ***Smt.Yallawwa Vs. Smt.Shantavva (AIR 1997 – SC – 35)***.

7.I have considered the matter in the light of the submissions made by the learned counsel for the petitioner as well as the learned counsel for the respondent.

8.In this case, the mother of the deceased daughter (divorced wife of the petitioner) claimed to be entitled to the arrears of maintenance accrued till the death of her daughter i.e. on 05.06.2021. Admittedly, there is a decree of maintenance recognising the wife's right to get maintenance in M.C.No. 1 of 2014 vide order dated 22.01.2021 on the file of the Judicial Magistrate No.II, Madurantakam and the amount was ascertained and specified as Rs.7,500/- and ordered to be paid from the date of petition, i.e., 04.01.2014 and the arrears claimed in CMP.No.678 of 2021 in M.C.No.1 of 2014 is Rs.6,37,500/-. No doubt, the right of maintenance is wife's personal right. The maxim "***Action personalis moritur cum***

persona” (A personal action dies with the person) is applicable, so far as future maintenance is concerned. So far as the arrears of maintenance is concerned, it is a property of wife as per the explanation 2 Section 14 of Hindu Succession Act. Section 14 of Hindu Succession Act, 1956, reads as follows:

14.Property of a female Hindu to be her absolute property.—

(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner. Explanation.—In this sub-section, “property” includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or

under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

9.A combined reading of the two sub sections and the explanation leaves no doubt that the arrears of maintenance is the property including both movable and immovable property acquired by a Hindu under a decree. Sub Section 2 does not operate to take the arrears of maintenance acquired by a Hindu female out of the purview of sub section 1.

10.Further, Section 6 of the Transfer of Property Act, 1882 provides what may be transferred, it provides that property of any kind may be transferred, except those enumerated in the Section, it runs as follows;

6. What may be transferred.—Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force:

(a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a

kinsman, or any other mere possibility of a like nature, cannot be transferred.

(b) A mere right of re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby.

(c) An easement cannot be transferred apart from the dominant heritage.

(d) All interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.

[(dd) A right to future maintenance, in whatsoever manner arising, secured or determined, cannot be transferred.]

(e) A mere right to sue (The words “for compensation for a fraud or for harm illegally caused” omitted Act 2 of 1900, S.3.) cannot be transferred;

(f) A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable.

(g) Stipends allowed to military, 6 [naval], 7 [air-force] and civil pensioners of 8 [the Government] and political pensions cannot be transferred.

(h) No transfer can be made (1) in so far as it opposed to the nature of the interest affected thereby, or (2) [for an unlawful object or consideration within the meaning of section 23 of the Indian Contract Act, 1872 (9 of 1872), or (3) to a person legally disqualified to be transferee].

10[(i) Nothing in this section shall be deemed to authorise a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a court of Wards, to assign his interest as such tenant, farmer or lessee.]”

11. In the instant case, the petitioner the mother of the deceased daughter i.e Saraswathi wife of the husband only claim arrears of maintenance, that had already accrued, to which wife was entitled, on the date of her death, as a legal heir, the respondent claimed.

12.In so far as the arrears of maintenance have accrued due, it would in the nature of property which is heritable but a right to future maintenance is however not transferable or heritable by virtue of Section 6(dd) of the Transfer of Property Act.

13.In this case, by virtue of a divorce decree passed by the Sub Court Cheyyar in HMOP No.52 of 2000 filed by the petitioner husband on 20.01.2005, the marriage gets dissolved and the status of the spouses gets changed and they become Ex.husband and Ex wife and as a result of such a decree of divorce, the marriage tie is snapped. After such a decree, when the spouses have ceased to be husband and wife and become Ex husband and Ex wife, proprietary right of both the spouses also get affected. If the wife dies leaving behind her any property, as per section 15 of the Hindu Succession Act, the property of the female Hindu shall devolve according to the Rules set out in Section 16 - firstly upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband. Because of a divorce decree, when the spouses do not remain husband and wife, the mutual rights of inheritance in each other's property

on the death of either of them got extinguished. The principle stated by the Supreme Court in *Smt. Yallawwa Vs. Smt.Shantavva (AIR 1997-SC-35)* is squarely applicable to the present case.

14. Section 15 of Hindu Succession Act runs as follows:

15. General rules of succession in the case of female Hindus.

—

(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,—

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1),—

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including

the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.

15.In view of Section 15(1)(c) of the Hindu Succession Act, the mother is entitled to the property of her daughter. In this case, the arrears of maintenance accrued till the death of her daughter Saraswathi (wife of the petitioner). Therefore, the learned Judge rightly impleaded the mother of the deceased daughter (wife of the petitioner) in the petition for arrears of maintenance. There is no infirmity in the order passed by the learned Judge and no reason to interfere with the impugned order and no merit in the criminal revision case. Accordingly, the criminal revision case is dismissed. Consequently, connected miscellaneous petitions are closed.

Index : Yes/No

Internet : Yes/No
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21.04.2023

To

The Judicial Magistrate Court No.II,
Madurantagam.

CrI.R.C.No.291 of 2022

V.SIVAGNANAM,J.

sms

**Pre-delivery order made in
CrI.R.C.No.291 of 2022
and
CrI.M.P.Nos.3028 & 9397 of 2022**

21.04.2023