

Madras High Court

C.Sundaramurthy vs K.P.Anantha Krishnan on 11 November, 2010

?IN THE HIGH COURT OF JUDICATURE AT MADRAS  
%DATED: 11/11/2010  
\*CORAM  
THE HONOURABLE MR.JUSTICE T.SUDANTHIRAM  
+CrL.RC.1878 of 2007  
#Premasundari  
\$R.Natarajan  
!FOR PETITIONER : C.Sundaramurthy  
^FOR RESPONDENT : K.P.Anantha Krishnan  
:ORDER

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED: 11.11.2010 CORAM THE  
HONOURABLE MR.JUSTICE T.SUDANTHIRAM CrL.R.C.No.1878 of 2007

1. Premasundari

2. N.Vanathi (minor) represented by her mother and guardian Mrs.Premasundari both residing at No.18, Thomaiyappan Street Royapettah, Chennai 600 014. ...Petitioners Versus R.Natarajan ...Respondent Criminal revision filed under Section 397 and 401 Cr.P.C., against the order passed in M.C.No.410 of 2004, on the learned II Additional Judge, Family Court, Chennai, dated 07.09.2007.

For Petitioner : Mr.C.Sundaramurthy For Respondent : Mr.K.P.Anantha Krishnan ORDER The first revision petitioner is the mother of the second revision petitioner who is a minor. The first petitioner filed an application under Section 125 Cr.P.C., claiming maintenance for herself and for her minor daughter. The said petition was dismissed by the learned II Additional Family Court Judge at Chennai. Aggrieved by the said order, the petitioners have preferred this criminal revision petition.

2. The case of the first petitioner is that she married the respondent on 20.11.1991 and after the marriage, both of them resided at No.18, Thommayappan Street, Royapettah, Madras. The respondent herein is an Advocate. Ex.P.1 is the marriage invitation. Out of the wedlock, the first revision petitioner delivered a female child on 08.08.1994 and the name of the child is Vanathi. Ex.P.2 is the birth certificate of Vanathi. After the birth of the child, the respondent herein deserted the first petitioner and he did not support the family. Ex.P.3 is the progress report of the minor child Vanathi who was the student of third standard. Ex.P.4 copy of the order passed by the Principal Family Court, Madras in M.C.No.77 of 1988 dated 11.06.1990. As per the said order, the first revision petitioner filed her application claiming maintenance from her first husband one Duraikannan and the said Duraikannan had obtained an ex-parte decree in O.S.No.7233 of 1988 for

declaration that the marriage was null and void. Thereafter, a compromise was entered into between both parties and on the basis of the compromise, the maintenance petition was withdrawn by the petitioner.

3. The case of the respondent is that the first petitioner is not the wife of the respondent and the first petitioner was already married to one Duraikannan and the marriage was in subsistence and the respondent as an Advocate conducted the case on behalf of the first petitioner in the maintenance proceedings in M.C.No.54 of 1988 and subsequently that petition was disposed of. The respondent was married to Banumathi on 29.01.1975 and the marriage invitation is Ex.R.1 and the marriage photos are Ex.R.2 and the copy of the family ration card is Ex.R.4. In the family card, the names of the respondent, his wife, daughter, mother and his brother are mentioned. The respondent had further stated that Ex.P.1 is a concocted one and the name of the first petitioner is not mentioned and Ex.P.2 birth certificate is also a forged one.

4. On the side of the revision petitioner, before the trial Court, the first petitioner examined herself as P.W.1 and her mother was examined as P.W.2 and Exs.P.1 to P.4 were marked. On the side of the respondent the respondent examined himself as R.W.1 and Exs.R.1 to R.8 were marked. The trial Court also after analysing the evidence, dismissed the petition filed by the first petitioner for the reason that the respondent was already married to one Banumathi and the petitioner failed to prove that she got married to the respondent and lived together as husband and wife. The trial Court also observed that there was no oral or documentary evidence available to prove that the second petitioner was born through the respondent and the petitioner failed to prove through scientific test that the second petitioner was born through the respondent.

5. The learned counsel appearing for the revision petitioners submitted that the trial Court after accepting that the marriage between the first petitioner and one Duraikannan was declared null and void, failed to consider the fact that the first petitioner got married to the respondent on 20.11.1991 and the trial Court rejected Ex.P.1 merely for the reason that the printers' name is not found in Ex.P.1 marriage invitation. The learned counsel for the petitioner further submitted that even if the maintenance is not granted to the first petitioner, the maintenance should have been awarded to the second petitioner who is the child of the respondent and Ex.P.2, birth certificate contains the name of the respondent as father of the child. The learned counsel for the petitioners further submitted that the trial Court had observed that there was no scientific test and the first petitioner filed an application for DNA test, but it was not ordered. The learned counsel for the petitioners also submitted that the first petitioner and the child are ready to subject themselves for the DNA test. The learned counsel for the petitioners submitted that now some additional documents are available such as pregnancy medical record issued by the hospital, birth record and the community certificate of the second petitioner and a xerox copy of the family ration card which may be taken into consideration for deciding the issue.

6. Per contra, Mr.K.P.Anantha Krishnan, learned counsel appearing for the respondent submitted that the respondent had established by oral and documentary evidence that the respondent was married to Banumathi and the first petitioner is not the wife of the respondent. The learned counsel for the respondent also pointed out that Ex.P.1 marriage invitation produced by the revision

petitioner is concocted for the purpose of the case and also pointed out that Ex.P.2 birth certificate of the child said to have been issued by the Corporation of Chennai carries an interpolation of the initial "R" in Column No.7. The learned counsel also submitted that there was no scientific proof to prove the paternity of the child and the documents filed by the first petitioner are insufficient and the trial Court having analysed the oral and documentary evidence has held that the respondent is not the father of the child and as such this being a revision petition, reappraisal of evidence is not proper. The learned counsel for the respondent also relied on the decision of the Honourable Supreme Court reported in 1986 Cri.L.J 1070 (Pathumma and another vs. Muhammad).

7. This Court considered the submissions and perused the records. According to the respondent, he married Banumathi on 29.01.1975 and the marriage is still in subsistence. The documents Exs.R.1 to R.8 established the fact that the respondent is the husband of Banumathi. Though it is claimed by the first petitioner that she married the respondent on 20.11.1991, it cannot be held as a valid marriage. The trial Court also observed that Ex.P.1 marriage invitation did not contain the printing press name. On perusal of Ex.P.1, it appears that the father of the respondent Rangasamy was inviter for the marriage, but it is mentioned in the invitation itself that the respondent is son of 'Late. Rangasamy.' Therefore, the contention of the respondent that Ex.P.1 is concocted for the purpose of the case is to be accepted. Even otherwise, as the first petitioner is not a legally wedded wife, she is not entitled for maintenance.

8. Though the first petitioner is not entitled for maintenance, as far as the second petitioner is concerned who is the minor, it is to be seen whether she is entitled for maintenance. According to the learned counsel for the petitioners, the first petitioner and the respondent were living together at No.4, Gangaiyamma Kovil street and also in a house at Thiru.Vi.Ka Nagar. She gave birth to a child on 08.08.1994 and only after the birth of the child, the respondent deserted. As per law, even illegitimate child is entitled for maintenance, but the trial Court did not grant maintenance to the minor child for the reason that the petitioner failed to prove through scientific test that the second petitioner was born to the respondent. It is not always necessary to prove the paternity of the child through scientific test. The paternity of the child could be proved even by acceptable oral and documentary evidence. The birth certificate Ex.P.2 relating to the second respondent minor child was filed. This Court perused Ex.P.2, the birth certificate issued by the Corporation of Chennai dated 28.01.1998. In Ex.P.2, it is mentioned that the name of the child as N.Vanathi and her date of birth is mentioned as 03.08.1994 and the date of registration is 09.08.1994. The name of the father is mentioned as 'Natarajan' and the name of mother is 'Premasundari'. In column No.7, the name of the father is written as 'Natarajan' and his initial is written as "R". Of course, this "R" is in a different ink. May be this "R" written subsequently due to over interest. But for this reason, Ex.P.2 cannot be rejected. The evidence of P.W.1 that she and the respondent were living together is not shattered in the cross examination. The first revision petitioner after her separation from her first husband, for some period had been living together with the respondent. The respondent though given oral evidence as R.W.1, he had bluntly denied his relationship with the first petitioner. This mere denial is not convincing to this Court. The respondent while denying his paternity of the child, he could have preferred an application before the trial Court for DNA test and he being an Advocate, being aware of the procedures could have chosen to file such an application, but he conveniently avoided. The case is to be decided on preponderance of probabilities with the available evidence. The fact that

the first petitioner was kept as a mistress by the respondent is established. While so, the second petitioner being the child of the respondent is entitled for maintenance.

9. The respondent who examined himself as R.W.1 had not stated anything about his income. According to the first petitioner, the respondent has got income from his profession and also has got immovable properties. Even in the counter statement filed, the respondent had not denied the fact of owning properties.

10. In the result, this revision petition is dismissed in respect of the first petitioner and it is allowed in respect of the second petitioner. The respondent is directed to pay Rs.3000/- per month towards maintenance for the second petitioner Vanathi (minor) and the said maintenance amount should be paid from the date of maintenance petition filed before the Court, i.e., 30.07.2004.

11. The respondent is directed to pay the monthly maintenance amount to the second petitioner on or before 10th of every month. The arrears of maintenance amount as per the order of this Court should be paid within three months from the date of this order.

11.11.2010 Index:yes Internet:yes ksr T. SUDANTHIRAM, J.

Ksr To The learned II Additional Judge, Family Court, Chennai Pre-delivery Order in CRL.R.C.No.1878 of 2007 11.11.2010 Pre-delivery Order in Crl.R.C.No.1878 of 2007 To THE HONOURABLE MR.JUSTICE T.SUDANTHIRAM Most Respectfully Submitted:

K.Sivakumar 09.11.2010