



SA(MD)No.200 of 2024

THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.03.2024

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

S.A.(MD).No.200 of 2024

Kaliyaperumal

... Appellant

Vs

1. Thangamani,

2. The Tahsildar,
Kulithalai Taluk Office,
Kulithalai, Karur District.

3. The Revenue Divisional Officer,
Kulithalai, Karur District.

4. The District Collector,
Collectorate, Thanthonimalai,
Karur Taluk, Karur District.

... Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and Decree passed by the Court of learned Sub Ordinate Judge, Kulithalai in A.S.No.4 of 2016 on 19.02.2019, confirming the judgement and decree passed in O.S.No.74 of 2011 by the District Munsif, Kulithalai, on 28.02.2014.



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For Appellant : Mr.S.Srikanth
for M/S.APN.Law Associates
For R-1 : Mr.G.Sridharan

JUDGMENT

This Second Appeal is filed to set aside the Judgment and Decree dated 19.02.2019 passed in A.S.No.4 of 2016 on the file of Sub Court, Kulithalai, confirming the Judgment and Decree dated 28.02.2014 passed in O.S.No.74 of 2011 on the file of the District Munsif, Kulithalai.

2. The Plaintiff in the suit is the Respondent and the 1st Defendant in the suit is the Appellant herein. For the sake of convenience, the parties shall be referred as Plaintiff and Defendant as per the ranking in the suit.

3. The suit is filed by the plaintiff as indigent person. The prayer in the suit is to direct the 1st defendant to pay Rs.3,000/- as past and future maintenance and to create charge over the suit mentioned property for paying maintenance. The brief facts as stated in the plaint is that the



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plaintiff and the 1st defendant were married 30 years ago and out of the wedlock two sons were born namely Ramachandramoorthi and Krishnamurthi. Since the 1st defendant was living wayward life, the sons were living separately. Further the 1st defendant is addiction to alcohol and would beat the plaintiff black and blue. Inspite of unlawful activities and wayward life of the 1st defendant, the plaintiff was living with the 1st defendant and tolerated his activities. However, the 1st defendant had driven the plaintiff during February 2005. The plaintiff was not having any means to live and hence the suit for maintenance.

4. The 1st defendant had filed written statement wherein the 1st defendant had denied the allegations stated in the plaint and stated that the 1st defendant did not know the plaintiff and no way related with the 1st defendant at any point of time. The marriage between the plaintiff and the 1st defendant is denied and prayed to dismiss the suit.

5. After considering the pleadings and evidence the Trial Court decreed the suit. Aggrieved over the same the 1st defendant had preferred



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First Appeal and the same dismissed. Aggrieved over the same the 1st defendant had preferred the present second appeal. In the second appeal the following substantial questions of law are raised:

- i. Whether the marriage of the 1st defendant with the appellant herein was established in accordance with law?*
- ii. Even assuming but without admitting that the marriage between the appellant and the 1st respondent is accepted to be established, whether the marriage is valid when the appellant is already married to another woman and the same is subsisting?*
- iii. Whether the Courts below are right in accepting the mere oral evidence of the 1st respondent in proof of marriage?*
- iv. Whether the documents produced in Ex.A1 to A11 are sufficient to establish a legally valid marriage?*

6. The plaintiff had not proved any marriage invitation or photo to prove the marriage between the plaintiff and the 1st defendant. But had produced ration card, voter list, Aadhar, passport, pan card, transfer certificate of children, community certificate of children as Ex.A1 to A11, wherein the 1st defendant's name is mentioned as father. The PW 2



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and PW3 have stated that the marriage to the 1st defendant happened with the plaintiff and the said Dhanalakshmi on the same date. Further the 1st defendant had deposed as DW1, wherein he had stated it is common to marry two women in their community. Further the 1st defendant had admitted that his father is aware of his marriage with the plaintiff. This fact is considered by the First Appellate Court and has come to the conclusion that the marriage is established and the relevant portion of the judgment is extracted hereunder:

“16.மேலும், பி.வா.சா.1 தனது சாட்சிநிபந்தனில், தான் ஊராளிக்கவுண்டர் இனத்தை சார்ந்தவர். ஒரு மனைவி இருக்கும்போது, மற்றொரு மனைவியை திருமணம் செய்வது வழக்கம். துனது நடவடிக்கை காரணமாக மனைவி வாதி 2005ம் ஆண்டிலிருந்து பிரிந்து வாழ்கிறார் என்பதை மறுக்கிறார். துனது தந்தையை விசாரித்தால், தனக்கும் வாதிக்கும் திருமணம் நடந்த விபரம் தெரியும் என்றால் சரி தான் என்று சொல்கிறார்.”

Therefore the Courts below had come to the conclusion that the marriage is established. After hearing the arguments and after perusing the evidence especially Ex.A1 to A11 this Court is of the considered opinion that the marriage is established. Further when the 1st defendant had



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admitted that his father is aware of his marriage with the plaintiff, then it is proved that the marriage is established. Even though the said evidence is weak, at least it is proved that the plaintiff and the 1st defendant were living together as husband and wife. In such circumstances the plaintiff is entitled to maintenance.

7. As far as the contention of the 1st defendant that he had been married one Dhanalakshmi, the Courts below had dealt with the plea and held that the first defendant has not stated in his pleadings and the said plea has been raised at the time of oral evidence. The relevant portion of the judgment is extracted hereunder:

“On perusal of records, it is (pertinent to) clear that the 1st defendant has never raised any pleadings in respect of marriage with Dhanalakshmi. But on the other hand, he has taken a stand that he married Dhanalakshmi and he got three children through Dhanalakshmi.

It is settled law that pleadings is the part and parcel of evidence

Therefore, this Court is of the view that the 1st defendant cannot given evidence in the absence of specific pleadings.”

When the first defendant has not pleaded that he has been married to the



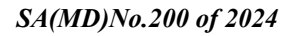
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said Dhanalakshmi, any oral evidence cannot be entertained and the Trial Court has rightly come to the conclusion. Further the 1st defendant had not stated the date of marriage with Dhanalakshmi and has not established the said marriage. A bare statement that he had been married to the said Dhanalakshmi is not sufficient to consider the said plea.

8. For the reasons stated supra all the substantial questions of law are answered against the 1st defendant. The judgment and decree of both the Courts are confirmed and the second appeal is dismissed.

9. The plaintiff had submitted calculation sheet for arrears of maintenance. As per the calculation the amount payable by the 1st defendant is Rs.6,03,000/-. The 1st defendant has already deposited a sum of Rs.50,000/- in the EP Court and the balance amount payable is Rs.5,06,000/- as on date i.e., 26.03.2024. The 1st defendant is directed to pay the balance amount of Rs.5,06,000/- in three installments. The 1st defendant shall pay the first installment of Rs.2,00,000/- (Rupees Two Lakhs only) on or before 02.09.2024. The second installment of





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TO:

- 1.The Sub Ordinate Judge,
Kulithalai.
- 2.The District Munsif Judge,
Kulithalai.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

jbr

Judgment made in
S.A.(MD)No.200 of 2024

Dated:
26.03.2024