



S.A.(MD)No.10 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 18.07.2024

PRONOUNCED ON:30.10.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

**S.A.(MD)No.10 of 2020
and
C.M.P.(MD)No.176 of 2020**

Natchammal alias Kumarayee : Appellant/Respondent/Plaintiff

Vs.

R.Periyasamy :Respondent/Appellant/Defendant

PRAYER:- Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 28.02.2019 in A.S.No.9 of 2019, on the file of Additional Sessions Judge cum Fast Track Mahila Court, Karur in reversing the judgment and decree dated 05.11.2013 made in O.S.No.199 of 2011, on the file of the Principal Subordinate Judge, Karur.

For Appellant : Mr.K.Shree Kumaran Nair
for Mr.K.Govindarajan

For Respondent :Mr.M.P.Senthil



WEB COPY



S.A.(MD)No.10 of 2020

JUDGMENT

The Second Appeal is directed against the judgment and decree passed in A.S.No.9 of 2019, dated 28.02.2019, on the file of the Additional Sessions Court / Fast Track Mahila Court, Karur reversing the judgment and decree made in O.S.No.199 of 2011, dated 05.11.2013, on the file of the Principal Subordinate Court, Karur.

2. The appellant who is the plaintiff, has filed the suit claiming past and future maintenance and for creating a charge over the suit properties for the due and prompt payment of the maintenance amount.

3. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in their original suit.

4. It is not in dispute that the marriage between the plaintiff and the defendant was solemnized in or about 1978 as per caste custom and rituals of their community and that they were not having any issues.



S.A.(MD)No.10 of 2020

WEB COPY

5. The case of the plaintiff is that the defendant, after two years of their marriage, had started to lead a wayward life of his choice without looking after the family, that when the same was questioned by the plaintiff, the defendant used to beat her under intoxication and caused mental and physical cruelty, that in January 1980, the defendant had driven the plaintiff out of the matrimonial house and since then, she has been residing separately, that the defendant had provided a meagre sum of Rs.9,000/- as maintenance and got the release deed on 29.09.1983, that the amount so paid was not sufficient to meet out the both ends, that the plaintiff has now become old and unable to do any work and is hardly struggling to sustain for the past 4 years prior to the filing of the suit, that though the plaintiff approached the defendant in the year 2005 in person and requested him to provide maintenance for her sustenance, but the defendant was not amenable and he was adamant in not paying any amount to the plaintiff, that all the efforts taken by the plaintiff through her close relatives went in vain and the defendant had neglected the plaintiff at her old age, that the defendant is owning properties and is deriving huge income, that the defendant is legally bound to maintain the petitioner and is liable to pay past and future maintenance and that therefore, the plaintiff was constrained to file the above suit claiming



S.A.(MD)No.10 of 2020

past maintenance at Rs.1,20,000/- and the future maintenance at Rs. 3,000/- per month and Rs.2,000/- per year towards clothing and Rs. 2,000/- per year for medical expenses from the date of the petition till her life time.

6. The defence of the defendant is that due to the plaintiff's infertility, she was not able to give birth to a child, that the plaintiff was not in cordial terms with the defendant and his family members, that the plaintiff without any valid and justifiable and legal grounds left the matrimonial home and went to her father's house in the year 1981, that all the efforts taken by the defendant for reunion was not fruitful, that a panchayat took place in the fourth week of September 1983 in and by which, the plaintiff expressed her willingness to release her maintenance right by receiving consolidated amount of Rs.9,000/- by executing a maintenance release deed and also expressed her desire for divorce, that the plaintiff had accordingly received a sum of Rs.9,000/- on 29.09.1983 and executed a maintenance release deed in favour of the defendant, that the plaintiff on the same date at the residence of the defendant had divorced the defendant as per the custom prevailed in the community, that the plaintiff is not the wife of the defendant on and from 29.09.1983



S.A.(MD)No.10 of 2020

and as such, the plaintiff is not legally entitled to claim maintenance from the defendant, as she has already executed a total relinquishment deed in favour of the defendant, that there is no cause of action for the suit and that the suit is liable to be dismissed.

7. The learned trial Judge upon perusing the pleadings has framed the following issues:

- (1) Whether the plaintiff is entitled to get the maintenance amount as prayed for?
- (2) Whether the suit has not been valued properly?
- (3) To what other relief?

8. During trial, the plaintiff has examined herself as P.W.1 and exhibited one document as Ex.A.1. The defendant has examined himself as D.W.1 and examined two witnesses namely Thiru.Shanmugam and Thiru.Jegatheesh Kumar as D.W.2 and D.W.3 respectively and exhibited 3 documents as Exs.B.1 to B.3. 3 Court documents came to be marked as Exs.X.1 to X.3. The learned trial Judge, upon considering the pleadings and evidence both oral and documentary and on hearing the arguments of both sides, has passed the judgment and decree dated 05.11.2013



S.A.(MD)No.10 of 2020

WEB COPY

granting past maintenance at the rate of Rs.1,000/- per month for 3 years and future maintenance at the rate of Rs.2,000/- per month from the date of suit till her life time and also created a charge over the suit properties for prompt payment of maintenance amount. Aggrieved by the judgment and decree, the defendant has preferred an appeal in A.S.No.9 of 2019 and during the pendency of the appeal, the defendant has filed an application in I.A.No.8 of 2019 for reception of additional evidence under Order 41 Rule 27 C.P.C., and the learned appellate Judge, upon considering the materials available on record and on hearing the arguments of both sides, has passed the impugned judgment and decree dated 28.02.2019, allowing the appeal and thereby setting aside the judgment and decree passed by the trial Court, dated 05.11.2013 and thereby dismissed the suit. Challenging the impugned judgment and decree, the present Second Appeal came to be filed.

9. At the time of admission, the following Substantial Questions of Law came to be formulated:

“(1) Whether the first appellate Court was right in non suiting the appellant/defendant on the strength of Ex.A.1 alone and without taking into account Section 25 of the Hindu Adoption and Maintenance Act?



S.A.(MD)No.10 of 2020

WEB COPY

(2) Whether the first appellate Court was right in considering Exs.X.2 and X3 in the absence of necessary pleadings?”

10. The learned Counsel for the appellant / plaintiff would submit that the first appellate Court has erred in considering Exs.X.2 and X.3 in the absence of pleadings, that the first appellate Court has failed to follow the settled principle that no amount of evidence can be looked into sans pleadings, that the finding of the first appellate Court relying on Ex.X.2 that the plaintiff has sufficient means to maintain herself is erroneous, that the appellate Court is also erred in allowing the petition for reception of additional evidence without any basis, that the appellate Court in relying Ex.B.4 as additional evidence is erroneous as there were no pleadings for the same, that the additional documents can be produced in appellate stage only with regard to the facts already proved and new facts cannot be introduced, that the appellate Court has failed to appreciate Ex.A.1 in the light of Section 25 of the Hindu Adoption and Maintenance Act 1956, that the respondent/defendant in his evidence would admit that the plaintiff was not doing well and was taking treatment for some ailments and his obligation to maintain the plaintiff,



S.A.(MD)No.10 of 2020

WEB COPY

that Ex.A.1 is not an absolute bar for granting maintenance to the plaintiff in view of her current financial, social and health conditions and that therefore, the impugned judgment and decree of the first appellate Court are liable to be interfered with.

11. The learned Counsel for the defendant would mainly contend that the plaintiff has admittedly executed a maintenance release deed on 29.09.1983 under Ex.A.1 in favour of the defendant, that the plaintiff has received Rs.9,000/- as lumpsum maintenance amount under Ex.A.1 release deed and that therefore, the plaintiff is not entitled to claim maintenance after the lapse of more than 18 years, as there was no existing relationship of husband and wife between them and in view of the execution of the maintenance relinquishment deed. The learned Counsel would further submit that the suit property was sold to one Valarmathy, vide sale deed dated 12.09.1983 itself even before the execution of the release deed by the plaintiff, that the defendant has absolutely no right or title or interest over the suit properties even on the date of filing of the suit and that since the trial Court has created charge over the suit properties, he was constrained to file the petition for



S.A.(MD)No.10 of 2020

reception of additional evidence for production of the sale deed dated 12.09.1983.

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12. It is not in dispute that the alleged purchaser Valarmathy is none other than the second wife of the defendant. But the fact remains that the sale deed was executed by the defendant in favour of the said Valarmathy on 12.09.1983 prior to the filing of the suit and more importantly even prior to the execution of maintenance relinquishment deed by the plaintiff. No doubt, as rightly contended by the learned Counsel for the plaintiff, the defendant has not raised any pleadings with regard to the sale made by him to the said Valarmathy. But as already pointed out, the trial Court has created charge over the suit properties for the prompt payment of maintenance awarded and as rightly contended by the learned Counsel for the defendant, the defendant was constrained to file the said document as additional evidence. Whatever it is, the main issue to be decided is whether the plaintiff is entitled to get maintenance as per Section 25 of the Hindu Adoption and Maintenance Act or whether there is any bar or prohibition to claim maintenance in view of the execution of the maintenance relinquishment deed under Ex.A.1.



S.A.(MD)No.10 of 2020

WEB COPY

13. Since the learned Counsel for the plaintiff would mainly rely on Section 25 of the Hindu Adoption and Maintenance Act, it is necessary to refer the same, which is as follows:

“25.Amount of maintenance may be altered on change of circumstances. -The amount of maintenance, whether fixed by a decree of court or by agreement, either before or after the commencement of this Act, may be altered subsequently if there is a material change in the circumstances justifying such alteration. “

14. The learned Counsel for the plaintiff would rely on the judgment of this Court in ***Pavayammal Vs. Komarasami and Others*** reported in ***2002 STPL 9418 Madras*** and the relevant passage is extracted hereunder:

“The question that arises for consideration is whether there is a material change in the circumstances justifying alteration and if the answer is 'yes', what is the reasonable amount that can be fixed as maintenance, in the facts and circumstances of the case. The plaintiff in her evidence has categorically stated that because of the ill-health, she is not in a position to go to



WEB COPY



S.A.(MD)No.10 of 2020

work regularly and earn her livelihood. That apart, she has also stated before Court that cost of living has gone up very much and the value of the rupee has gone down much. She has further deposed before the Court that the value of the land is Rs.1,00,000/- per acre and because of the fertility of the soil and copious supply of water available in the well, item No.1 of the property will get at least a sum of Rs.20,000/- as net income. Even though second defendant as DW-1 denied this, it has to be stated that he has not come out openly as to how much income he was deriving from the land every year, which would indicate that he is not inclined to come out before Court with truth. In such circumstances, this Court is rather inclined to accept the testimony of PW-1 substantially. That apart, this Court can certainly take judicial notice of the fact that the cost of living in 1982 was more when compared to that was in the year 1967. A similar view was taken in the decision (DB) ([Indira Bai v. B.A.Patel](#)). Hence this would constitute a change of circumstance.”

15. At this juncture it is also necessary to refer the Full Bench Judgment of Andhra Pradesh High Court in ***Ganta Kondama Vs. Ganta Seethamma*** reported in ***1973(2) APLJ 14*** and the relevant passages are extracted hereunder:



WEB COPY



S.A.(MD)No.10 of 2020

“All these decisions however, lay down only one thing and that is that notwithstanding any agreement by a widow or other maintenance holder not to claim higher rate of maintenance, even when changed circumstances warrant, such a person would be entitled to enhanced maintenance under [Section 25](#) of the Act if there has been a material change in the circumstances.

It must be borne in mind that the said decisions do not relate to a question, as here where the right to maintenance itself was relinquished albeit in consideration of specified sum of money. In principle it would not make any difference if the right to maintenance is given up in lieu of some moveable or immovable property or in lieu of a certain amount. These decisions do not concern themselves with the question as to whether the right of maintenance which stood relinquished prior to the Act gets revived under [Section 25](#) of the Act. These decisions therefore are not authorities for the proposition that even if right to maintenance is relinquished prior to the Act, the result of the opening words of [Section 25](#) is to revive the right and the Court can enhance the amount of maintenance even if such a case. There is no justification for confusing the two distinct and separate and mutually exclusive problems. The operation of these decisions therefore cannot be extended to the cases of relinquishment of right to maintenance effected prior to the Act. Any such appraisal of these decisions would open the floodgate of



WEB COPY



S.A.(MD)No.10 of 2020

cases even where rights to maintenance was extinguished long prior to the Act. It is true that the word ' agreement ' appearing in [Section 25](#) is of wider import and there is no justification to restrict the scope of that word. It must, however, be remembered that though the width of that word may not expressly or by necessary implication exclude any category of arguments, yet however comprehensive that word may be, the agreements in all cases must have fixed amount of maintenance for the operation of that section. What is thus plain is that any agreement which does not fix the amount of maintenance would not come within the purview of [Section 25](#). Where an agreement releases or relinquish the very right to maintenance, can it validly be contended that even such an agreement fixes the amount of maintenance ? Distinction ought to be made between a lump sum amount fixed for maintenance for life and a lump sum amount paid as a consideration for relinquishment of the right to maintain itself. In one the right subsists and in the other it is extinguished. One is apt to go wrong if this difference is not borne in mind.

Exhibit B-1 expressly states that the plaintiff has relinquished or given up her right to maintain. She categorically said that she will have no right to family property out of which she had the right to be maintained. She did not stop at that. She further and quite unambiguously said that she has given up her right to



WEB COPY



S.A.(MD)No.10 of 2020

maintenance and that she will not raise any dispute regarding the right to maintenance thereafter. We do not consider there could have been more apt and clear words to extinguish her right to maintenance. It would be misreading the deed if Exhibit B-1 is construed as fixing the amount of maintenance and keeping the right to maintenance alive. It would be contrary to the plain language of the deed and would be inconsistent with the intention of the parties so clearly expressed.”

16. The learned Counsel for the defendant would rely on the Division Bench judgment of this Court in ***Muniammal Vs. Raja alias Kolandai Gounder*** reported in **90 L.W.668**, wherein the Full Bench judgment of the Andhra Pradesh High Court in ***Ganta Kondama Vs. Ganta Seethamma*** was referred and distinguished and the relevant passages are extracted hereunder:

“A plain reading of the section would leave no doubt that a decree or agreement fixing maintenance will not bar a wife from claiming increased maintenance if the circumstances justify such alteration. This section confers ample powers on the Court to alter either by varying or modifying any order fixing the amount of maintenance made by a decree of the court or by agreement subsequently if there is a material



WEB COPY



S.A.(MD)No.10 of 2020

change in the circumstances justifying such alteration. It would seem that the circumstances justifying alteration would principally be changed in the pecuniary circumstances of the parties. By now it is well-settled that a decree or agreement fixing maintenance in favour of a wife or widow or other claimant is no bar to a claim for increased maintenance under this section if the circumstances justify such alteration and it is immaterial whether the decree or agreement was before or after this Act, notwithstanding the fact that the claimant had agreed not to claim higher maintenance even in changed circumstances. In other words, the right conferred under this section supersedes any contract to the contrary. But there are also judicial pronouncements to the effect that where a maintenance holder under an agreement has completely relinquished her right of maintenance prior to the coming into force of the Act, she cannot claim any enhanced amount under [Section 25](#) on the ground that there are material changes in the circumstances.

No doubt, the right of maintenance is a personal right and it is an incident of the status of matrimony and a Hindu is under a legal obligation to maintain his wife. The obligation to maintain the wife is personal in character and arises from the very foundation of the existence of the relationship between the parties. The party who stands benefited by this Act can keep that right and enforce the same or throw it away. If the right is given up or relinquished completely in consideration



WEB COPY



S.A.(MD)No.10 of 2020

of a lump sum or consolidated payment, the maintenance holder cannot agitate her claim over again unless the contract of relinquishment is attacked as vitiated by undue influence or fraud. But if the right to maintenance is given up in receipt of a consolidated amount under an agreement with a stipulation not to ask for more, but without relinquishing her subsisting right, the position will be different and, therefore, in such contingencies we have to see whether after this Act coming into force the wife or the widow can claim enhanced or increased maintenance in view of the changed circumstances justifying her claim.”

17. Section 25 of Hindu Adoption and Maintenance Act states that the amount of maintenance can be changed, if there is a material change in circumstances and the said Section confers ample powers on the Court to alter the amount of maintenance made by a decree of the Court or by agreement subsequently if there is material change in the circumstances justifying such alteraion.

18. Even if the agreement stipulates that the claimant had agreed not to claim higher maintenance even in changed circumstances, Section 25 of the said Act would get attract and the claimant can very well claim



S.A.(MD)No.10 of 2020

higher amount citing the changed circumstances, but if the claimant has relinquished her right completely in consideration of the lumpsum payment, then the maintenance holder cannot agitate her claim over again. But at the same time, there is no bar to attack the agreement itself as vitiated by fraud or uninfluence.

19. As already pointed out, admittedly the plaintiff has executed a release deed dated 29.09.1983 and whereunder as rightly pointed out by the learned Counsel for the defendant, the plaintiff had relinquished her maintenance right by receiving lumpsum amount of Rs.9,000/- from the defendant. It is necessary to refer the exact recitals in Ex.A.1 release / relinquished deed

“..... தங்கள் மனைவி குமராயி என்கிற நாச்சம்மாள் ஆகிய நான் எழுதிக்கொடுத்த ஜீவனாம்ச பாத்திய விடுதலைப் பத்திரம். தாங்கள் என்னை சுமார் 5 வருடங்களுக்கு முன் திருமணம் செய்து சுமார் 2 வருட காலம் குடும்ப வாழ்க்கை நடத்தியதில் எனக்கு எவ்வித சந்ததியும் ஏற்படவில்லை பிறகு நமக்குள் மன ஒற்றுமையில்லாமல் நமக்குள் அடிக்கடி வீண் சண்டை சச்சரவுகள் ஏற்பட்டும் நான் தங்கள் குடும்பத்தில் ரூக்கப் பிரியப்படாமல் என் பெற்றோர்கள் வீட்டில் சுமார் 3 வருட காலமாக நேந்து வருகிறேன். எனையும் தங்கள் குடும்பத்தில் தங்களுடன் குடும்ப வாழ்க்கை நடத்த எனக்கு



WEB COPY



S.A.(MD)No.10 of 2020

தேடமில்லாமல் நிரந்தரமாகவ என் பெற்றார்கள் வீட்டிலுய நேக்க
எண்ணம் கொண்டு என் ஜீவனாம்சத்திற்காக மொத்தத்தில் ஒரு
தொகை கொடுக்கவண்டுமென்று தட்களைக் ுகட்டதற்கு மத்தியத்தர்கள்
பைசல் படி தாட்கள் என்னுடைய ஜீவனாம்சத்திற்காகவும்இ
திருமணத்திற்காகவும் மொத்தத்தில் ரொக்கமாக ரூ.9 இ000 / –
கொடுத்து விடுவதாகவும் என்னை ஜீவனாம்ச பாத்திய விடுதலைப்
பத்திரம் எழுதிக்கொடுக்கும்படியும் ுகட்டதற்கு நானும் ஒப்புக்கொண்டு
தை: தொகை ரூ.9 இ000 / – மும் நீத விடுதலைப்பத்திரம் பதிவாகும்
சமயம் திரு.சார்பதிவாளர் அவர்கள் முன்னிலையில் தட்களிடம் நான்
ரொக்கம் பெற்றுக்கொள்வதாக ஒப்புக்கொண்டுஇ தட்களைப் பொறுத்தும்
தட்கள் குடும்பச்சொத்துக்களைப் பொறுத்தும் எனக்குள்ள பாத்தியத்தை
பேப்பத்திரம் முலம் தட்களுக்கு நான் விடுதலை செய்து
கொடுத்துவிட்டன். னே தட்களைப் பொறுத்தும் தட்கள் குடும்பச்
சொத்துக்களைப் பொறுத்தும் எனக்கு எவ்வித் பாத்திய சம்பந்தமும்
பின் தொடர்ச்சியும் கிடையாது. னே தட்களிடம் முன்பின் யாதொரு
தொகையும் ுகட்க எனக்க உரிமையில்லை.
நீதப்படி நான் மனப்பூர்வமா சம்மதித்து எழுதிக்கொடுத்த ஜீவனாம்ச
பாத்திய விடுதலைப்பத்திரம்.””

20. Moreover, in the said relinquishment deed, she has also
consented for customary divorce and that she had stated that she has no
objection for the defendant to enter into another marriage. Considering



S.A.(MD)No.10 of 2020

WEB COPY

the recitals above referred, it is clearly evident that the plaintiff had snatched her relationship with the defendant and his family and that she received Rs.9,000/- as lumpsum amount by relinquishing her rights.

21. In view of the legal position above referred, Section 25 of the Hindu Adoption and Maintenance Act has no application to the case on hand. Hence, this Court has no hesitation to hold that the plaintiff is not entitled to claim maintenance in view of the relinquishment made by her under Ex.A.1 agreement. In view of the above position, it is not necessary to go into the second Substantial Question of Law with regard to the plaintiff's ability to maintain herself.

22. The first appellate Judge, without considering the points for determination in the appeal, by allowing the petition for reception of additional evidence and taking note of the fact that the defendant had already sold the suit property in the year 1983 and as such, the plaintiff cannot make any claim and charge over the property covered in the above sale deed and on that basis allowed the appeal. But as already pointed out, this Court has come to a decision that the plaintiff is not entitled to get the relief and as such, her suit is liable to be dismissed and the



S.A.(MD)No.10 of 2020

judgment of the first appellate Court setting aside the judgment and decree passed by the trial Court and consequently, dismissing the suit are to be confirmed, but for different reasons. Hence, the Substantial Questions of Law are decided against the plaintiff and in favour of the defendant. In view of the above, the Second Appeal is liable to be dismissed. Considering the other facts and circumstances, this Court is of the view that the parties are to be directed to bear their own costs.

23. In the result, the Second Appeal is dismissed and consequently, the judgment and decree of the first appellate Court in A.S.No.9 of 2019, dated 28.02.2019, on the file of the Additional Sessions cum Fast Track Mahila Court, Karur, setting aside the judgment and decree passed by the trial Court in O.S.No.199 of 2021, dated 05.11.2013, on the file of the Principal Subordinate Court, Karur and consequently, dismissing the suit are confirmed. Consequently, the connected Miscellaneous Petition is also dismissed. The parties are directed to bear their own costs.

30.10.2024



S.A.(MD)No.10 of 2020

NCC : Yes:No
Index : Yes : No
Internet : Yes : No
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To

1. The Additional Sessions cum Fast Track Mahila Court, Karur.
2. The Principal Subordinate Court, Karur.
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A.(MD)No.10 of 2020

K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

S.A.(MD)No.10 of 2020

30.10.2024