

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.189 of 2015

and

M.P.No.1 of 2015

N.Neelaveni

... Appellant/Respondent/Plaintiff

Vs.

K.P.Parameshwaran

...Respondent/Appellant/Defendant

Prayer:- This Second Appeal has been filed under Section 100 of Civil Procedure Code against the judgment and decree dated 26.02.2010 passed in A.S.No.24 of 2009 on the file of the learned Subordinate Judge, Udagamandalam, in reversing and setting aside the judgment and decree dated 19.12.2008 made in O.S.No.345 of 2004 on the file of the learned District Munsif, Udhagamandalam.

For Appellant : Mrs.A.M.Bakiavathy
for Ms.R.Gouri

J U D G M E N T

The plaintiff/appellant who lost her case before the Lower Appellate Court by judgment and decree dated 26.02.2010 passed in A.S.No.24 of 2009 on the file of the learned Subordinate Judge, Udagamandalam, in reversing and setting aside the judgment and decree dated 19.12.2008 made in O.S.No.345 of 2004 on the file of the learned District Munsif, Udhagamandalam, has filed the second appeal.

2.The plaintiff who is the wife has filed O.S.No.345 of 2004, claiming maintenance from the defendant husband. The marriage of the appellant with the respondent took place on 24.08.1988 and the fact is that two male children were born out of their marriage and the appellant and respondent have been living separately from 15.07.1993 are all admitted facts.

3.The plaintiff/wife has been living away from the defendant/husband from the year 1993. The suit has been filed in the year 2004, claiming maintenance for a sum of Rs.2500/- per month. The respondent husband have resisted the suit on the ground that there

was already a document executed on 15.07.1993 which is marked as Ex.B1 by both the parties. As per the above said document, the appellant and respondent mutually agreed to dissolve their marriage. The children were entrusted to the custody of the husband. The wife also had given up her right of maintenance and she had also taken her articles belonging to her given at the time of her marriage with the respondent. As she had already relinquished her right to claim maintenance, it is contended by the husband that before the Courts below that she was estopped from claiming any maintenance. The said document Ex.B1 was admitted by the plaintiff and it is also said to be a registered document.

4. Though the trial court had decreed the suit by awarding a sum of Rs.1500/- per month as maintenance, the First Appellate Court after elaborate discussion, considering the clause in the agreement had dismissed the suit on the ground that plaintiff had suppressed the material fact that Ex.B1 was executed by her, relinquishing her right of maintenance. Though the plaintiff/appellant contended that the said document was not acted upon, the same has not been established by the appellant.

5. On the pleadings of both the parties, necessary issues were framed by the Trial Court. Before the Trial Court, the Plaintiff had marked Exs.A1 to A3 and PW.1 and P.W.2 were examined on the side of the plaintiff. D.W.1 to D.W.3 were examined on the side of the Defendants and Ex.B1 to B3 were marked.

6. The Trial Court, after considering both the oral and documentary evidence, allowed the suit whereas the first appeal filed as against the Judgment and Decree of the Trial Court was dismissed by the lower Appellate Court. Hence, this second appeal has been filed by the plaintiff.

7. This court heard the submissions of the learned counsel for the Appellant and also perused the material records placed.

8. The plaintiff also alleged that the respondent was living with another woman but however, it was denied by the respondent stating that she was only a maid appointed to take care of the children and to assist his mother. Having admitted the execution of Ex.B1, the appellant had not taken any steps to cancel the same on the ground of either fraud or coercion. Admittedly, the parties are living away from each other from 1993. The plaintiff had made this claim after 10 years. In such circumstances, there is no merit in the contention of the appellant and there is no question of law that arise for consideration in the above second appeal and the same deserves to be dismissed.

9. Accordingly, the Second Appeal is dismissed confirming the judgment and decree dated 26.02.2010 passed in A.S.No.24 of 2009 on the file of the learned Subordinate Judge, Udagamandalam. Consequently, connected Miscellaneous Petition is also closed. No costs.

DP

s/d-
Assistant Registrar(CS-III)

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Sub-Assistant Registrar

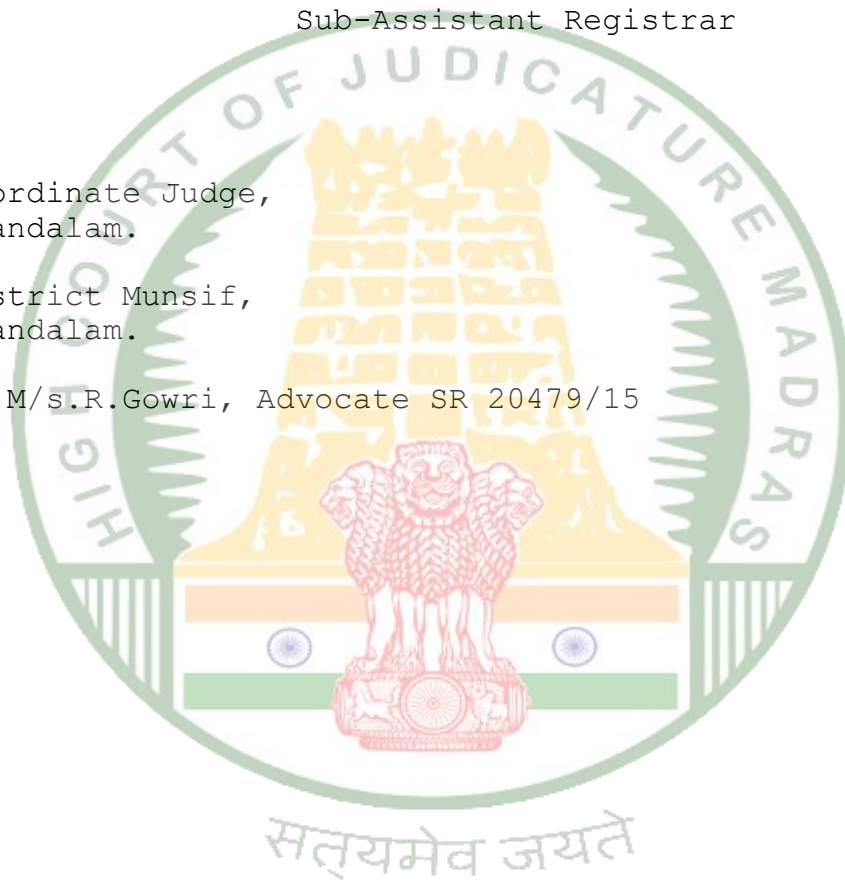
To

1.The Subordinate Judge,
Udhagamandalam.

2.The District Munsif,
Udhagamandalam.

+ 1 cc to M/s.R.Gowri, Advocate SR 20479/15

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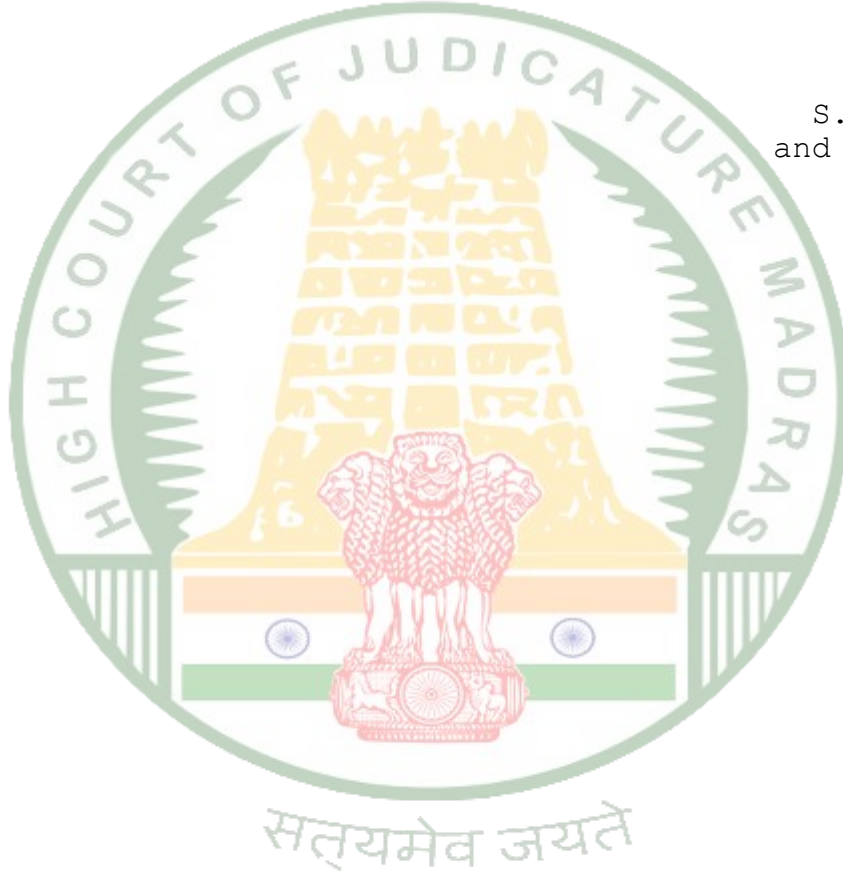
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PUSHPA SATHYANARAYANA.J,

DP

Judgment made in
S.A.No.189 of 2015
and M.P.No.1 of 2015

15.04.2015



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