

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.08.2015

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

S.A.No.2219 of 2003

K.Palanisami Gounder .. Appellant/Appellant/Defendant.

-Vs-

Kandayee @ Ammani Ammal .. Respondent/Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree of the Principal District Judge, Salem dated 10.10.2003 made in A.S.No.43 of 2003 confirming the judgment and decree of the I Additional District Munsif, Salem dated 04.12.2002 made in O.S.No.376 of 1999.

For Appellants : M.Naveenkumar
for Mr.S.T.S.Murthy

For Respondent : Mr.V.Lakshminarayanan

J U D G M E N T

The second appeal arises out of a decree passed by the lower appellate court confirming the decree of the trial court directing payment of maintenance to the plaintiff in the original suit at the rate of Rs.1,000/- per month. Admittedly the appellant is the husband and the respondent is his wife. Their marriage took place somewhere around 1952 when the respondent/plaintiff was a minor. On attaining majority, the respondent/plaintiff did not initiate any proceeding for annulling the marriage. The appellant also did not take steps to have the marriage annulled on the ground that he was forced to marry the respondent against his will, even though such a stand was taken by him in his written statement for the first time. Alleging desertion and failure to provide for her maintenance, the respondent herein/plaintiff filed the above said suit for a decree directing the appellant/defendant to pay her maintenance of Rs.1,000/- per month and also a charge over the properties of the appellant/defendant. Past maintenance was also claimed for three years prior to the filing of the suit.

2. The claim was resisted by the appellant herein/defendant on the following contentions:

The marriage was solemnised against the will of the appellant/defendant. The respondent/plaintiff also was not willing to marry the appellant/defendant and she disliked him and refused to cohabit with the appellant/defendant. As the appellant/defendant was forced to marry the respondent/plaintiff and live with her at the house of her mother, he suffered much humiliation. He did not desert the respondent/plaintiff and on the other hand it was he who was driven out by the respondent/plaintiff. The plaintiff owned properties worth Rs.1.00 Crore and she had sufficient means to maintain herself. Hence the respondent/plaintiff was not entitled to claim maintenance.

3. After trial, on an appreciation of evidence, the learned trial judge held that the defence plea taken by the appellant herein/defendant could not be sustained and on the other hand, the respondent/plaintiff had proved her entitlement to claim maintenance from her husband, namely the appellant/defendant. Taking into account the need of the respondent/plaintiff, the family status and the financial position of the appellant/defendant and also the fact that the appellant/defendant admittedly contracted a second marriage, the learned trial judge held him liable to pay maintenance at the rate of Rs.1,000/- per month. Resultantly, the learned trial judge granted a decree as prayed for directing payment of pre-suit maintenance at the rate of Rs.1,000/- per month for three years and pendente lite and future maintenance at the same rate and also creating a charge over the properties of the appellant/defendant.

4. Aggrieved by the said decree of the trial court dated 04.12.2002, the appellant/defendant preferred an appeal in A.S.No.43/2003 on the file of the Principal District Judge, Salem. The learned lower appellate judge, after re-appreciation of the evidence, concurred with the findings of the trial court in all respects and dismissed the appeal confirming the decree passed by the trial court. It is as against the said decree of the lower appellate court dated 10.10.2003, the present second appeal has been filed.

5. As projected by the appellant, at the time of admission of the second appeal on 04.03.2004, the following question was formulated as the substantial question of law involved in the second appeal.

Substantial Question of Law:

"Cannot the fact that the wife had been living away from her husband for over 50 years, during

which there was no complaint at all against him, be taken to imply her consent to live separately?"

6. The arguments advanced on both sides are heard. The judgments of the courts below and the other materials available on record are also perused.

7. The question formulated at the time of admission of the second appeal as the substantial question of law involved in the second appeal is not unambiguous. It simply refers to the alleged separate living of the husband and wife for over 50 years in support of the contention of the appellant/defendant that the husband and wife were living separately by consent. It is not clear as to whether the 50 years period referred to in the question pertains to the period prior to the filing of the suit or it includes the period after the filing of the suit also. If at all it would include the post-plaint period, the question itself shall be improper, because the separate living of the husband and wife after the filing of the suit for maintenance on the ground of desertion cannot be projected as a circumstance showing that the wife is living separately with the consent of the parties.

8. Section 18 of the Hindu Adoption and Maintenance Act, 1956 deals with the right of the wife to claim maintenance from her husband. It reads as follows:

"18. Maintenance of wife - (1) Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her lifetime.

(2) A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance,-

(a) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or of wilfully neglecting her;

(b) if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband;

(c) if he is suffering from a virulent form of leprosy;

(d) if he has any other wife living;

(e) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere;

(f) if he has ceased to be a Hindu by conversion to another religion;

(g) if there is any other cause justifying her living separately.

(3) A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion."

Clause (d) squarely applies to the case on hand. Admittedly, the appellant/defendant contracted a second marriage and he is living with other woman, who was married by him as his second wife. The same itself shall be a justification for the respondent/plaintiff living separately and seeking maintenance from her husband, namely the appellant/defendant. Further, the courts below have concurrently found that the desertion alleged by the respondent/plaintiff was substantiated. Such a finding of fact cannot be interfered with in the second appeal unless the said finding is shown to be perverse.

9. It is a fact admitted by the appellant/defendant that he is not living with the respondent/plaintiff and he had not taken steps for the restitution of the conjugal relationship. On the other hand, there are clear admissions to the effect that he disliked her and he had gone to the extent of stating that the marriage was forced on him against his will and that he disliked the respondent right from the beginning. The same will be enough to substantiate the contention of the respondent/plaintiff that she was mentally ill-treated and the appellant/defendant was also guilty of desertion. It is also not in dispute that the appellant/defendant failed to provide funds for the maintenance of the respondent/plaintiff. Though the appellant/defendant could have taken a plea that the respondent/plaintiff owned properties worth rupees one crore and derived copious income from the same, the said contention has not been substantiated by reliable evidence. The finding in this regard also, being a finding of fact, cannot be said to be perverse permitting this court to interfere with the same.

10. So far as the quantum of maintenance is concerned, a sum of Rs.1,000/- per month either in 1999 or today cannot be said to be excessive or exorbitant. In fact in the present day scenario, the said amount cannot match the requirement of a woman like the respondent/plaintiff. Hence, on the question of quantum also there is no scope for interference. Moreover as per Section 100 of the Civil Procedure Code, a second appeal will lie to the High Court against the appellate decree of a court subordinate to the High Court on a substantial question of law alone. As pointed out supra, the question formulated at the time of admission of the second appeal cannot be said to be a substantial question of law and the said question is also formulated in ambiguous terms. Hence this court comes to the conclusion that no substantial question of law arises for consideration in the second appeal. There is no merit in the second appeal and the same deserves to be dismissed.

In the result, the second appeal is dismissed with cost.

asr

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

1. The Principal District Judge,
Salem
2. The I Additional District Munsif
Salem

+ 1 cc to M/s.STS Murthy, Advocate SR 45683

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