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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.03.2016

CORAM :

THE HONOURABLE Mr.JUSTICE S.MANIKUMAR

and

THE HONOURABLE Mr.JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal (MD) No.174 of 2016

and

CMP (MD) No.2636 of 2016

M.S.Chokkalingam ... Appellant/Respondent-1
Vs.
1.Davamani, W/o.Chokkalingam ... Respondent-1.Petitioner
2.Rajkumar, S/o.M.S.Chokkalingam ... Respondent-2/Respondent-2

Civil Miscellaneous Appeal under Section 19 of the Family Courts Act, 1984, against the Order, dated 22.07.2009, made in M.C.No.98 of 2006, on the file of Family Court, Madurai.

For Appellant : Mr.M.Mahaboob Athiff for
M/s.Ajmal Associates
For Respondent : No Appearance

JUDGMENT

(Delivered by **S.MANIKUMAR, J**)

This appeal has been filed against the order of the Family Court, Madurai, in M.C.No.98 of 2006, dated 22.07.2009, directing the appellant and the 2nd respondent herein to pay Rs.1250/- and Rs.750/-, respectively, towards maintenance to the first respondent herein.

2.Heard the learned counsel for the appellant and perused the materials available on record.

3.The facts, which are not in dispute, are that the marriage between the appellant and the 1st respondent herein was solemnized on 24.01.1967. At the time of marriage, the appellant was working in Indian Army. The 2nd respondent was born in the month of March, 1974. Before him, a girl baby was also born to them. The appellant retired from service on 23.09.1974. Thereafter, he joined a Bank.



4. The case of the first respondent/wife is that after his retirement, her husband, the appellant herein did not take care of the family members and therefore, she and her children were living with her mother. With great hardship, she brought up both the children and given her daughter, in marriage on 20.05.1995. She also performed marriage to the 2nd respondent, and he is now living separately, with his family. Now, she is aged and she could not do any work. The appellant is living with one Shanthi and therefore, he is not taking care of the first respondent/wife. The 2nd respondent is also not paying any amount for her expenses. The appellant is getting Rs.40,000/- per month as income, from his military pension, bank pension and income from house property. The 2nd respondent is earning Rs.4,000/- per month, by doing own business.

5. With the above averments, the first respondent has filed a Maintenance Case under Section 125 of the Criminal Procedure Code before the Family Court Madurai, praying for a direction to the appellant and the 2nd respondent, to pay a sum of Rs.1500/- and Rs.3000/-, respectively, per month towards maintenance. After, analysing the evidence adduced, both oral and documentary, the Family Court directed the appellant to pay a sum of Rs.1250/- per month and the 2nd respondent to pay a sum of Rs.750/- per month towards maintenance to the 1st respondent. Aggrieved by the same, the appellant/husband is on appeal before this Court.

6. The only ground raised in the appeal is that the first respondent/wife has her own source of income. But, the appellant has not produced any evidence before the Family Court to show that the first respondent/wife has any source of income to maintain herself. Instead, the Tribunal has found that the appellant is getting a sum of Rs.4,500/- as pension for his service in the Indian Army and Rs.3,400/- as pension for the services rendered in a Bank, after retirement from Army. The Family Court has also found that the appellant is owning a house property and also getting a sum of Rs.2000/- as rent. It is also the finding of the Family Court that the appellant is living with one Shanthi and it is admitted by the appellant himself, in his evidence and therefore the first respondent/wife is living separately. In the counter filed by the 2nd respondent/son, he has admitted that he is doing business in automobiles, and he is willing to pay Rs.500/- per month as maintenance to his mother.

7. In view of the above findings, we are of the view that the Family Court is justified in allowing the petition filed by the first respondent/wife and in directing the appellant and the 2nd respondent to pay a sum of Rs.2000/- per month, as maintenance to the first respondent. (Rs.1250/- by the appellant and Rs.750/- by the 2nd respondent). There are no grounds to interfere with the order of the learned Court. We see no merit in the appeal.



Accordingly it is dismissed. No order as to costs. Connected miscellaneous petition is also dismissed.

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CN/AN-MP/5.04.2016/3P-3C

Judgment in
CMA (MD) No.174/2016
and
CMP (MD) No.2636/2016

Dated:11.03.2016