



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.07.2016

CORAM:

THE HONOURABLE Ms.JUSTICE R.MALA

Second Appeal (MD) No.515 of 2016

Vijayakumari

... Appellant

versus

Vijitharan @ Samuvel

... Respondent

Prayer: Second Appeal is filed, to set aside the judgment and decree passed by the Subordinate Judge, Padmanabhapuram dated 05.02.2013 made in A.S.No.47 of 2012 confirming the judgment and decreetal order made in O.S.No.333 of 2010 dated 05.03.2012 on the file of the Principal District Munsif, Padmanabhapuram.

For Appellant : No Appearance

JUDGMENT

The appellant, who lost the legal battle in both the Courts below has come forward with this second appeal against the judgment and decree dated 05.02.2013 made in A.S.No.47 of 2012, by confirming the judgment and decreetal order made in O.S.No.333 of 2010 dated 05.03.2012.

2.The appellant, as a plaintiff, has filed a suit, claiming maintenance against her husband stating that the marriage between herself and her husband was performed on 25.04.1983 and due to the lawful wedlock, she gave birth three children and the elder daughter was given marriage and she is settled at Chennai. The respondent / defendant has neglected to maintain the appellant / plaintiff and hence, she constrained to file a suit for maintenance creating a charge over the properties of the husband.

3.The defendant/respondent herein has filed a detailed written statement stating that the plaintiff was leading a adulterous life with one Sekar and on oral quarrel, she left the matrimonial home and even today, the respondent/defendant is ready to take care of the wife for the sake of their children, who are at Chennai. Further, it is stated that he is sending money to the plaintiff through money order and hence, he prayed for the dismissal of the suit.



4.The trial Court, after considering the plaint and written statement, framed necessary issues and after considering the arguments made on either side, dismissed the suit stating that without any reason, the plaintiff left the matrimonial home and hence, she is not entitled any maintenance, against which, an appeal was preferred and the first appellate Court has also dismissed the appeal, by holding that without any reason, the plaintiff left the matrimonial home and hence, she is not entitled for maintenance.

5.No representation on behalf of the appellant. Perused the documents available on records.

6. Perusal of the judgment and decree of both the Courts below, I am of the view that the both the trial Court and the first appellate Court have correctly held that the wife has left the matrimonial home without any reason and considering the evidence of D.W.2, who is none other than the daughter of both the parties. The question as to whether the wife has left the matrimonial home without any reason is a question of fact and hence, no substantial question of law arises in this second appeal and the same is liable to be dismissed on the admission stage itself.

7.Accordingly, this second appeal is dismissed at the stage of admission. No costs.

Sd/-
Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

To

- 1.The Subordinate Judge, Padmanabhapuram
- 2.The Principal District Munsif, Padmanabhapuram.

+1 CC to Mr.M.A.ABDUL WAHAB, Advocate, SR No.35268

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