

Judgment Reserved on : 11.04.2017

Judgment Pronounced on : 18.04.2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Coram:

The Hon'ble Mr. Justice N.SATHISHKUMAR

Appeal Suit No.237 of 2010  
Cross-Objection No.25 of 2012  
and

M.P.No.1 of 2010 and C.M.P.No.5627 of 2017

Jayaraman

..

Appellant/Respondents/  
Cross objections/Defendant

Versus

1.Vimala

2.Seethalakshmi

..

Respondents/Cross  
Objectors/Plaintiffs

Appeal Suit filed under Section 96 of Civil Procedure Code and Cross Objections filed under Order 41 Rule 22 of the Civil Procedure Code, against the Judgment and decree passed by the Principal District Judge, Villupuram in O.S.No.86 of 2007 dated 20.01.2010.

For Appellant in CMA

Respondent in Cross Objection .. Mr.M.V.Karunakaran

For Respondents in CMA &  
for cross objection

.. Mr.N.Suresh

JUDGMENT

Aggrieved over the decree and judgment of the learned Principal District Judge, Villupuram, in O.S.No.86 of 2007 dated 20.01.2010, decreeing the suit for a sum of Rs.4.00 lakhs towards marriage expenses of the plaintiffs, the present appeal came to be filed by the defendant.

The plaintiffs also filed Cross-Objections challenging the decree and judgment of the learned trial Court for restriction of the claim of the plaintiffs to Rs.4.00 lakhs instead of 6.00 lakhs.

The Appellant has also filed a petition under Order XLI Rule 27 of Civil Procedure Code for reception of additional documents on the side of the Appellant. For the sake of convenience, the parties are arrayed as per their own ranking before the trial Court.

2. Brief facts of the plaintiffs' case is as follows:- The plaintiffs are the daughters of the defendant born through their mother Dhanammal. They have got two other brothers and one elder sister born through their mother Dhanammal to the defendant herein. The defendant has been leading a very wayward life and he was cohabiting with a concubine by name Malarvizhi. Because of the activities of the defendant, the defendant's father in order to protect his properties had even executed a registered settlement deeds in favour of his grandson Sivakumar. Even after such settlement, the defendant has encroached upon the properties settled in favour of his son Sivakumar. The plaintiffs along with their mother have also filed maintenance case against the defendant for his willful desertion of the plaintiffs and their mother, before the Chief Judicial Magistrate Court, Villupuram. In spite of the orders of the Chief Judicial Magistrate to pay Rs.1100/- per month as maintenance to the plaintiffs, the defendant did not comply with the order properly. The defendant had deserted the plaintiffs and their mother and residing with the concubine Malarvizhi and also begotten three children through the said Malarvizhi. The plaintiffs are living a very difficult economic condition even for day to day living and they are depending their brother Sivakumar's coolly work in the fields. The defendant is living with the said Malarvizhi in a very affluent economic condition. He is in possession of more than ten acres of land and also in possession of a rice mill in which he is earning Rs.1000/- per day. Because of difficult and impecunious situation of the family, their mother could not give consent for performing the marriage of the first plaintiff. For the performance of the marriage the plaintiffs required to spend substantial amount for purchase of jewels, utensils, cot and almirah etc. The above expenses are absolutely necessary considering the present gold market. Apart from the above expenses, minimum Rs.3.00 lakhs for each of the plaintiffs is required for the performance of their marriage. The defendant who is the father of the plaintiffs is liable to make payment for the marriage expenses of the plaintiffs. The defendant has spent huge amount for his illegitimate daughter born through Malarvizhi. The plaintiffs have issued a legal notice to the defendant demanding Rs.6.00 lakhs towards their marriage expenses. The defendant has not chosen to reply the same. Hence the suit.

3. The defendant generally denying the allegations in the plaint, further contended that the suit itself is filed at the

instigation of Sivakumar as a counter blast to the appeal preferred by this defendant in A.S.No.13 of 2006 on the file of the Principal Sub-Judge, Villupuram as against the decree and judgment in O.S.No.150 of 1998 to which the said Sivakumar and his mother Dhanammal are parties. The present suit is filed at the behest of the said Sivakumar. The defendant has incurred debts to the tune of Rs.4.00 lakhs towards the construction of the rice mill and a sum of Rs.3.00 lakhs towards the construction of the house and Rs.2.00 lakhs towards the marriage expenses of his daughters Sivakami and Jayanthi. Hence, he is not liable to provide the marriage expenses of the plaintiffs. However, as a dutiful father he would arrange for the marriage of his daughters provided they are willing and consenting to marry the persons chosen by him and withdraw the vexatious maintenance proceedings and the suit. It is the contention of the defendant that Malarvizhi is not a concubine and she was also married by the defendant with the consent of the plaintiffs' mother. The defendant has celebrated the puberty ceremonies of Sivakami and Jayanthi jointly on 12.05.1995 and celebrated the marriage of Sivakami on 26.10.2001. The marriage of Jayanthi was also celebrated by the defendant on 03.02.2006. The defendant has also alienated some of the suit properties in order to meet out the marriage expenses of the plaintiffs' sisters Sivakami and Jayanthi. The defendant has been discharging his duties as a dutiful father by doing justice to the children born to Dhanammal and Malarvizhi. There is no legal obligation for him to perform the marriage of the plaintiffs. But as stated above, as a dutiful father he is always willing to perform their marriage provided they are willing and prepared to accept the proposals brought out by the defendant.

4. In the additional written statement it is stated by the defendant that as the plaintiffs are majors even on the date of suit, there is no legal obligation on the part of the defendant to provide any maintenance or marriage expenses as per law. Hence prayed for dismissal of the suit.

5. On the basis of the above pleadings, the following issues were framed by the learned trial Judge:-

1. Whether the plaintiffs are entitled to recovery of Rs.6.00 lakhs from the defendant towards their marriage expenses?
2. Whether the suit is maintainable?
3. What relief the plaintiffs are entitled to?

6. On the side of the plaintiffs two witnesses were examined as P.W.1 and P.W.2 and marked three documents as Ex.A1 to A3. On the side of the defendant D.W.1 was examined and eight documents were marked as Ex.B1 to B8.

7. On the basis of the oral and documentary evidence and

materials, the learned trial Judge has granted decree for Rs.4.00 lakhs to the plaintiffs towards their marriage expenses and also passed a charge over the suit properties till the amount is realized.

8.Challenging the said decree and judgment, the present appeal came to be filed by the defendant. The plaintiffs also not satisfied with the quantum of the decree amount, filed the Cross Objection.

9.During the pendency of the appeal, the appellant has taken out a petition under Order XLI Rule 27 of Civil Procedure Code for reception of the additional documents namely: (i) Marriage invitation of the plaintiffs; (ii) certified copy of the settlement deed dated 7.5.1982 in favour of Sivakumar.

10.The main contention of the petitioner in the above petition is his father has executed two Gift Settlement Deeds both dated 07.05.1982 in favour of Sivakumar, the brother of the plaintiffs and also bequeathed equal share of the settled properties to all the sisters and brothers of the said Sivakumar. The above documents could not be produced and marked as exhibits on his side during the trial. Similarly, the marriage of the plaintiffs also took place in the year 2010 and 2012 respectively. So those documents are absolutely necessary. Hence, he prayed for reception of the additional documents.

11.The respondents denying the contention of the affidavit submitted that those documents are subsequent to the disposal of the first appeal in A.S.No.13 of 2006 on the file of the Principal Sub-Judge, Villupuram as against the decree and judgment in O.S.No.150 of 1998 to which the plaintiffs brother Sivakumar and mother Dhanammal are parties. The petitioner/appellant has also not even complied with the conditional order passed by this Court on 28.04.2010, to deposit a sum of Rs.1,50,000/- before the Court below. It is further contended that the property covered under the settlement deed is also in possession of the petitioner and he has also filed O.S.No.150 of 1998 for declaration to declare that the settlement is not valid and obtained an order of injunction not to disturb his possession and the plaintiffs' brother has also filed a suit in O.S.No.13 of 2006 for recovery of possession. Hence, the respondents prayed for dismissal of the petition.

12.Learned counsel appearing for the appellant submitted that the suit itself is filed for recovery of money from the defendant towards the marriage expenses of the plaintiffs and since the marriage of the plaintiffs is over in the year 2010 and 2012 there was no cause of action for the same. Similarly, the father of the defendant has executed two Gift Settlement Deeds both dated 07.05.1982 in favour of Sivakumar, the brother

of the plaintiffs and also bequeathed equal share of the settled properties to all the sisters and brothers of the said Sivakumar. Therefore, they are not entitled for any maintenance from the first defendant. The entire finding of the learned trial Judge is not based on the proper appreciation of the evidence. Hence, submitted that the trial Court without considering the vital documents, on the side of the defendant, has passed a decree for maintenance. Hence, prayed for allowing the appeal and also the petition for reception of additional documents.

13. Whereas the learned counsel for the respondents disputing the argument of the appellant's counsel submitted that the settlement deeds now sought to be marked as additional document is also challenged by the appellant in O.S.No.150 of 1998 and also obtained an order of injunction not to disturb his possession and the appellant is in possession of the property which was the subject matter of the settlement deeds. Though the marriage of the plaintiffs have performed after the disposal of the suit, that cannot relieve the defendant from paying the marriage expenses of the unmarried daughters as per the Hindu Adoption and Maintenance Act. The suit was filed only in the year 2006. At the relevant time, the plaintiffs were unmarried. The appellant being the dutiful father of the plaintiffs is liable to meet out the marriage expenses of the unmarried daughters as per the Hindu Adoption and Maintenance Act. Similarly, the appellant did not comply with the conditional order passed by this Court at the time of granting interim stay, directing the appellant to deposit Rs.1,50,000/- before the Court below. Since he has not complied with the conditional order, first of all, he has no right of audience. Hence, submitted that the contention of the appellant is not sustainable in law. The documents sought to be filed at the belated stage is no way relevance to the suit. Further, there is no diligence shown by the appellant in the settlement deeds before the trial Court. Hence, it is the contention of the learned counsel for the respondents that the document cannot be received mechanically in appellate stage. Hence, prayed for dismissal of the appeal as well as petition filed for reception of additional evidence. It is further contention of the learned counsel for the respondents that the trial Court ought to have awarded Rs.6.00 lakhs for the marriage expenses of both the plaintiffs. Whereas the learned trial Judge has awarded only Rs.4.00 lakhs. Hence, prayed that the same may be enhanced to Rs.6.00 lakhs by allowing the cross-appeal.

14. In the light of the above submissions now the points that arise for consideration are:-

1. Whether the additional evidence sought to be filed in C.M.P.No.5627 of 2017 are necessary for disposal of the appeal?

2. Whether the appellant is not liable to meet out the marriage expenses of his daughters at the relevant time?

3. Whether the decree amount awarded by the learned trial Court has to be enhanced?

4. To what relief?

15. Point No.1:- The petition has been filed for reception of three documents as additional evidence. Two documents said to be the marriage invitation of the plaintiffs dated 21.06.2010 and 08.07.2012 to prove the fact that the plaintiffs have got married and therefore, they are not entitled for any marriage expenses from the father. Similarly, the copy of the settlement deeds dated 07.05.1982 were filed to show that the properties settled under two Gift Settlement Deeds in favour of Sivakumar, have to be partitioned equally among the brother and sisters namely Sivakumar and the plaintiffs. Therefore, the contention of the appellant is that since the properties have been given to the plaintiffs under the Gift settlement deeds, the first defendant is not liable to pay maintenance amount to the plaintiffs. It is to be noted that only on satisfying the conditions set out in the order 41 Rule 27 the additional evidence can be received as evidence in the appellate stage. Sub-clause (1) (a) of Order 41 Rule 27 will not arise at all in this case since those documents have never been produced before the Court and refused by the Court. Similarly sub-clause (1) (aa) of Order 41 Rule 27 also does not apply to the facts of the case since the documents were not at all available at the relevant time. Whereas the document No.3 certified copy of the settlement deeds now sought to be filed was very much available at the relevant time. But the petitioner/appellant has not pleaded to show that he has exercised due diligence to file this document during the trial. Similarly, it is not the case of the petitioner the above document was not within his knowledge at the relevant time. Hence without satisfying the two conditions set out in the sub-section (1) of Order 41 Rule 27 the appellant has simply filed the settlement deeds. It is further to be noted that the settlement deed will not in any way advance the case of the appellant. The settlement was said to have been executed in favour of Sivakumar by the appellant's father in the year 1982. The evidence of the parties clearly show that the above settlement is also under challenge in a suit filed by the appellant/defendant and he is in possession of the property. Therefore, even if the above document is received in evidence the same will not be helpful to advance the case of the appellant to show that the properties have been given to the plaintiffs and therefore, they are not entitled for maintenance. As per his own evidence and pleadings it is clear that the above settlement was challenged by the appellant himself by filing a

suit and also obtained an order of interim injunction and he continuous to be in possession of the property. Therefore, the above documents will not be useful for any purpose in deciding the lis between the parties. Hence, this Court is of the view that the reception of the additional documents cannot be allowed at this stage. For the sake of filing the additional documents there must be some relevance attached to the documents to decide the case. This point is answered accordingly.

16.Point No.2:- The plaintiffs have pleaded that they were born to their mother Dhanammal through the defendant and they were deserted by their father and their father is living with the concubine Malarvizhi. Therefore, they have no other option except to file maintenance petition and also filed the present suit seeking for their marriage expenses.

17.In the written statement it is not denied by the defendant about the maintenance petition filed in M.C.No.2/2004 on the file of Chief Judicial Magistrate, Villupuram. Similarly, it is also not denied by the defendant that he is living with one Malarvizhi and also begotten three children through her. Though it is contended by the defendant that he has conducted the marriage of elder sister of the plaintiffs besides celebrating the puberty ceremonies, it is the contention of the defendant that he is not liable to provide marriage expenses to the plaintiffs. However, he would arrange the marriage expenses of the plaintiffs as a dutiful father provided they are willing to accept the proposal made by him and to withdraw the vexatious proceedings in the suit and the maintenance case. Similarly, in the additional written statement it is the case of the defendant that as the plaintiffs are major there is no obligation on his part to pay the marriage expenses to them.

18.P.W.1 in her evidence has stated that they were deserted by the defendant and the defendant is living with a concubine by name Malarvizhi and illegitimate sons and daughter and he is also in a very affluent economic condition owning immovable properties of more than ten acres and also in possession of a rice mill in which he is earning Rs.1000/- per day. Therefore, the plaintiffs being the unmarried daughters they are entitled to marriage expenses from their father. Though in her evidence she has admitted that her father has met out the expenses of their school education, similarly she has admitted that the marriage of her elder sister Sivakami was also performed by her father. Merely because one of the sisters marriage expenses was met out by the father it cannot be stated that the first defendant has taken care of the plaintiffs also. Though at the early stage the plaintiffs were given school education by their father that cannot be a ground to infer that the first defendant who have all along maintaining the plaintiffs. The manner in which the maintenance petition has been filed by the plaintiffs

and their mother as against the defendant and the conduct of the defendant in not paying the maintenance amount in spite of the order passed by the Chief Judicial Magistrate would clearly indicate the fact that the plaintiffs have not been properly maintained and taken care of by their father.

19.P.W.2 who is the paternal uncle of the plaintiffs in his evidence has stated that the defendant has neglected the family of the plaintiffs and plaintiffs are in fact totally depending upon the income of their brother Sivakumar who is also doing coolly work. The evidence of D.W.1 in the cross-examination when carefully read would clearly show that even after awarding of the maintenance by the Chief Judicial Magistrate, he has sold the property. This in fact clearly show that the defendant in one way or the other tried to deprive the right of the plaintiffs over the properties. Similarly the evidence also clearly show that he has also performed the marriage of the another daughter born through Malarvizhi and the elder daughter of Dhanammal he provided 10 sovereigns of gold each at the time of marriage and he has also met out their marriage expenses. The entire evidence when carefully seen there is no materials whatsoever to brought on record to show that as a dutiful father he has taken steps to conduct the marriage of the unmarried daughters. His evidence also clearly show that he owns immovable properties and he has also filed a suit in O.S.No.150 of 1998 challenging the settlement deeds executed by his father in favour of his own son. Further in the written statement it is pleaded by him that he will meet out the marriage expenses of the plaintiffs provided they withdraw the maintenance petition and also the suit filed by their brother. Similarly, he has taken a defence that he has no obligation to meet out the marriage expenses of the plaintiffs marriage. Therefore, the conduct of the defendant clearly shows that he in fact shirking his responsibilities to maintain the unmarried daughters and to meet out their marriage expenses as a dutiful father.

20.Admittedly, the defendant has deserted the unmarried daughters and living with another lady said to be the second wife while subsistence of the first marriage and the petition for monthly maintenance of his first wife and the daughters is pending before the Court of law. Similarly, he has pleaded in the written statement that he has also challenging the settlement deeds executed by his father in favour of his son Sivikumar in a suit O.S.No.150/1998. All these facts clearly indicate that the plaintiffs were totally neglected and deserted by the defendant. As a dutiful father, he is liable to meet out the marriage expenses of the daughters as per the Hindu Adoption and Maintenance Act. The maintenance includes the marriage expenses of the unmarried daughters. Therefore, the defendant being the father of the plaintiffs ought to have provided sufficient maintenance to meet out their marriage expenses also.

But he has not taken any steps in this regard and his pleadings and evidence clearly establish the fact that he has immovable properties and also rice mill. Though he contend that he has borrowed several amounts and he has no other means to repay the alleged borrowing, no materials is forthcoming to establish the same. Therefore, fixation of liability on the defendant to pay the plaintiffs Rs.2.00 lakhs each towards their marriage expenses, by the learned trial Court taking into consideration of the pleadings of the plaintiffs, is in the opinion of this Court does not require any interference.

21. Though there is escalation in the cost of jewels as sky-rocket that cannot be a ground to fix the liability on the defendant on the basis of the market value of the jewels and other articles. However, D.W.1 himself admitted that he has performed the marriage of the another daughter born through Malarvizhi and the elder daughter of Dhanammal and he has provided 10 sovereigns of gold each at the time of marriage and he has also met the marriage expenses, taking into consideration of the above facts and also normal expenditure would be required for conducting the marriage even it is done in a low profile manner Rs.2.00 lakhs awarded by the learned trial Court would be sufficient. Therefore, this Court is of the view that the decree and judgment granted by the trial Court does not require any interference. The point is answered accordingly. The Appeal stands dismissed.

22. Even the direction given by this Court in M.P.No.1 of 2010 while granting interim stay to deposit Rs.1,50,000/- by the defendant before the Court below was not complied with. The conduct of the defendant clearly exhibit his intention to shirk the responsibilities to provide marriage expenses of his unmarried daughters as a dutiful father. Therefore, this Court is of the view that the legal obligation cannot be shirked by him.

23. Though the plaintiffs have filed cross-appeal for enhancement of compensation the subsequent conduct of the parties and the subsequent happening clearly show that the marriage of the plaintiffs has already been performed in the year 2010 and 2012 respectively. Therefore, merely on the basis of the escalation in the value of the jewels enhancement cannot be ordered. Accordingly, the Cross-Appeal is dismissed. C.M.P.No.1 of 2010 is closed.

24. C.M.P.No. 5627 of 2017 filed for reception of documents is also dismissed.

-s/d-  
Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

To

1. The Principal District Judge  
Villupuram

+1 CC to Mr. N. Suresh, Advocate sr 23463

A.S.No.237 of 2010

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