

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.01.2017

Coram

The Hon'ble Dr.Justice G.Jayachandran

**S.A.No.956 of 2009 and
C.R.P.(NPD)No. 717 of 2011**

S.A.No.956 of 2009:

T.Munirathnam .. Appellant

/vs/

1.Bommi
2.Sonia .. Respondents

C.R.P.(NPD) No.717 of 2011:

T.Munirathnam .. Petitioner

/vs/

1.Bommi
2.Sonia .. Respondents

Prayer in S.A.No.956 of 2009: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 23.06.2009 passed in A.S.No.67 of 2007 on the file of the Sub Court, Arni confirming the judgment and decree dated 03.07.2007 passed in O.S.No.201 of 2001 on the file of the District Munsif Court, Arni.

Prayer in C.R.P.(NPD)No.717 of 2011: Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and

decretal order dated 02.02.2011 passed in E.P.No.81 of 2009 in O.S.No.201 of 2001 on the file of the District Munsif Court, Arni.

For Appellant/Petitioner :Mr.K.Govi Ganesan
(in both cases)

For Respondents/
Respondents :Mr.V.Raghavachari for R1 and
R2 (in both cases)

COMMON JUDGMENT

The defendant is the appellant before this Court. The appeal is directed against the concurrent finding of the Courts below.

2. The parties are described as per their rank and status shown in the original suit.

3. The short point involved in this appeal is as under:-

The first plaintiff is the wife of the defendant and the second plaintiff is the daughter of the first plaintiff. They filed the suit in O.S.No.201 of 2001 seeking maintenance against the defendant/appellant alleging that the first plaintiff and defendant got married on 17.10.1985 as per the Hindu Rites and Customs and from the wedlock, the second plaintiff was born. After the marriage, the defendant got employment in Food Corporation of India and left the family at Arni and stayed at Arakonam pursuant to his employment. Thereafter, he developed acquaintance with some other lady and neglected the first

plaintiff. Hence, the suit for maintenance of Rs.1000/- p.m. for the first plaintiff and Rs.500/- p.m. for the second plaintiff.

4. The plaintiff was contested by the defendant denying the marriage and alleging that the defendant was married to one Manonmani as early as 06.06.1983. When he visited Arni, he developed acquaintance with the first plaintiff in the year 1986, except temporary acquaintance with her, there is no other bondage with the first plaintiff.

5. The trial Court, after considering the evidence let in by the respective parties, relying upon Exs.A1 to A4 and deposition of PW2, held that the first plaintiff is the legally wedded wife of the defendant and the second plaintiff is born to him through the first plaintiff. After considering the earning capacity of the defendant, the trial Court has fixed Rs.1000/- per month as maintenance for the first plaintiff and Rs.500/- per month as maintenance for the second plaintiff. On appeal, the same was confirmed by the first appellate Court.

6. Aggrieved by the concurrent finding, the defendant has preferred the second appeal and this Court, before admitting the

second appeal, served notice to the respondents/plaintiffs to find out whether there is any question of law substantially to interfere with the concurrent finding of the Courts below.

7. The learned counsel appearing for the appellant/defendant submitted that the Courts below have not given due consideration for the marriage invitation of the earlier marriage took place with one Manonmani and the reason for the belated registration of the marriage in the year 2000. Contrarily, the Courts below have taken an adverse inference of registering the marriage, after seven years. The income of the appellant was not properly considered to ascertain whether he is capable of paying maintenance of Rs.1500/- per moth put together for the plaintiffs.

8.The learned counsel appearing for the respondents/plaintiffs submitted that the factum of marrige and birth of the second plaintiff and the income of the appellant are all questions of fact, which has been held against the appellant/defendant and there is no question of law involved in this case for interfering under Section 100 of the Civil Procedure Code.

9. After pursuing the judgment of the Courts below and the grounds of appeal raised by the appellant, this Court finds that there is no substantial question of law involved in this case to interfere with the finding of the Courts below and the finding of the Courts is reasonable and requires no inference and the second appeal is liable to be dismissed. Accordingly, the Second Appeal is dismissed. No costs. Consequently, connected M.P.No.1 of 2009 is closed.

10. The Civil Revision Petition is filed against E.P.No.81 of 2009 in O.S.No.201 of 2001 pursuant to the decree passed for recovery of arrears of maintenance by the trial Court.

11. In the light of the fact that the second appeal preferred by the revision petitioner/appellant is dismissed today on merits, nothing survives in the civil revision petition. Therefore, this Civil Revision Petition is closed. No costs. Consequently, Connected M.P.No.1 of 2011 is also closed.

06.01.2017

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To

- 1.The Sub Court, Arni.
- 2.The District Munsif Court, Arni.

Dr.G.Jayachandran, J.

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and
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