

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

A.S.No.128 of 2017
and
C.M.P.No.5664 of of 2017 and C.M.P.No.6948 of 2018

M.Senthil Amuthan Appellant/Defendant

Vs.

1. Chithra
D/o Narayanan
2. Minor Sonalika
3. Minor Rajeswar
Respondents 2 & 3 are minors
represented by the First respondent
Mother and Natural guardian Respondents/Plaintiffs

Prayer:-

Appeal Suit has been filed under Section 96 of C.P.C.,
against the judgment and decree dated 03.12.2016 made in
O.S.No.25 of 2010 (POP No.5 of 2008) on the file of the Family
Court, Salem.

For Appellant : Mr.S.Kanniah

For Respondents : Mr.M.Vijayakumar

* * * * *

JUDGMENT

(Judgment of the Court was delivered by R.Subbiah, J.)

This appeal has been filed as against the judgment and
decree 03.12.2016 made in O.S.No.25 of 2010 (POP No.5 of 2008)
on the file of the Family Court, Salem, decreeing the suit filed
by the respondents herein, directing the appellant herein to pay
the future maintenance of a sum of Rs.6,000/- to the first
respondent and Rs.4,000/- each to the 2nd and 3rd respondents, who
are the daughter and son of the appellant, and to pay the past
maintenance of Rs.3,000/- to the first respondent and Rs.2,000/-

each to the 2nd and 3rd respondents from 12.03.2016 to 03.12.2016, within three months and to return 26 sovereign jewels or its money value of Rs.2,47,000/- to the 1st respondent within three months.

2. The appellant herein is the defendant and the respondents herein are the plaintiffs before the Trial Court.

3(i) The case of the respondents/plaintiffs before the trial Court is that the marriage between the first respondent and the appellant was solemnised on 17.05.2002 at Arulmigu Devasena Thirumana Mandabam, Kumara Vayalure, Trichy as per Hindu rites and customs. At the time of marriage, the father of the first respondent gave 25 sovereign of gold jewels and Rs.40,000/- as dowry. That apart, the father of the first respondent gave colour Television worth of Rs.12,000/-, refrigerator worth of Rs.10,000/-, washing machine worth of Rs.6,000/-, Steel Almyra and cot worth Rs.8,000/- and Mixie, Grinder, Tape recorder, VCD, Tea pai and bed, in all worth Rs.11,500/- to the appellant. Further, the father of the 1st respondent also gave one sovereign of gold ring to the appellant at the time of marriage.

3(ii) After marriage, the appellant and the first respondent lived at Salem for some time and they went to Vittal Karnataka State, where the appellant was working as Scientist at Central Planation Crops Research Institute, Regional station, Vittal, mangalore, South Karnataka. Due to the wedlock, the 2nd and 3rd respondents were born. Thereafter, there was matrimonial dispute between them. The appellant filed F.C.O.P.No.72/2006 before the Family Court, Salem, for divorce on the ground of cruelty. Pending the divorce petition, the 1st respondent herein has filed P.O.P.No.5 of 2008 as informa pauperis and the same was numbered as O.S.No.25 of 2010, seeking to direct the appellant to pay Rs.30,000/- per month towards the maintenance for food, cloth, education and medical expenses of the respondents, to direct the appellant to pay Rs.30,000/- per month towards the past maintenance for 2 years for the respondents, to direct the appellant to return 26 sovereign of gold jewels or its value Rs.2,47,000/-, to direct the appellant to return the dowry amount of Rs.40,000/- to the respondents, to direct the appellant to return Rs.12,000/- paid for colour T.V., to direct the appellant to return the amount paid for refrigerator of Rs.10,000/-, to direct the appellant to return the amount paid for washing machine, steel almyra, Grinder, Tape recorder, VCD, Tea pai and Bed worth Rs.25,500/-

4. The said suit was opposed by the appellant/ respondent therein by filing a detailed counter. He has stated that the second male child was not born to him and the same was born due to respondent/petitioner's adulterous life with one S.Subramani.

Hence, the appellant herein has filed FCOP.No.72 of 2006 arraying the said S.Subramani as the second respondent therein for divorce under section 13(1)(i) of Hindu Marriage Act, for adultery and under Section 13(1)(ia) of Hindu Marriage Act, for cruelty and also sought for DNA test to prove the paternity of the 2nd male child. The present suit is only as a counterblast to the said Divorce petition. The appellant was ready for DNA test but the first respondent and the second respondent therein are not willing to undergo DNA test. But the said Petition was dismissed. The respondent always used filthy languages against the appellant in the presence of his family members and when he questioned the same, she threatened to commit suicide. This created great hardship and mental agony to the appellant. It is true that the appellant is a scientist but he strongly denied that he was earning Rs.60,000/- per month and denied that he was owning movable and immovable properties worth than 1 crore. There was no bonafide in the claim of the respondent. Hence, he sought for dismissal of the suit.

5. On the above pleadings, the Trial Court has framed the following issues:

(1) Whether the 3rd Plaintiff is the biological son of the defendant?

(2) Whether the plaintiffs 1 to 3 are entitled for any maintenance from the defendant. If so how much?

(3) Whether the defendant received and retaining 26 sovereigns of gold jewels worth Rs.2,47,000/- and Rs.40,000/- as dowry. If so whether the defendant is liable to return the same to the plaintiff?

(4) Whether the defendant received and retaining the following articles worth mentioned. If so whether the defendant is liable to return the same to the plaintiff?

a. Colour TV worth Rs.12,000/-?

b. Refrigerator worth Rs.10,000/-?

c. Washing machine, Steel Almyra, Grinder, tape recorder, VCD, Teapai and Bed worth Rs.25,500/-?

5. What other relief the plaintiffs are entitled?

6. The Trial Court conducted Trial and on the side of the plaintiffs/respondents herein, first respondent examined herself as P.W.1, besides examining the Branch Manager of Cooperative Bank, Gugai as P.W.2 and marked 13 documents as Ex.A.1 to Ex.A.13. On the side of the defendant/appellant, the appellant examined himself as D.W.1 and no documents were marked on his side.

7. Pending the suit, the respondent filed I.A.No.47/2015 claiming a huge sum of Rs.50,000/- per month as interim maintenance and the Court below, ordered Rs.7,000/- to each of the respondents from the date of order namely 25.08.2015. The appellant also filed I.A.No.48 of 2015 seeking for D.N.A test to ascertain the paternity of the second child. The said application was dismissed. Hence, aggrieved against the orders in I.A.Nos.47 and 48 of 2015, C.R.P.Nos. 4207 and 4208 of 2015 have been filed before this Court. This Court, granted interim stay in M.P.No.1 of 2015 in C.R.P.No.4207/2015 on condition that the appellant should deposit a sum of Rs.15,000/- from the date of application till 31.01.2016 and litigation expenses of Rs.5,000/-. In pursuant to the said order, the appellant has deposited a sum of Rs.1,35,000/- and the said C.R.P. was also allowed and the maintenance amount was fixed at Rs.15,000/- per month. However, the other C.R.P. seeking D.N.A. Test was dismissed. Further, the appellant filed Special leave petition against the order passed in C.R.P.Nos.4207 and 4208 of 2015 before the Supreme Court. The Honourable Supreme court dismissed the said Special leave petitions. Thereafter, the appellant filed review petitions against the order passed in C.R.P.Nos.4207 and 4208 of 2015 before this Court and the same is pending. In the meantime, the court below proceeded with the trial of the suit and when the appellant was in the witness box, the respondent's counsel filed a memo and sought for striking of the defence of the appellant on the ground that the appellant was in arrears of maintenance amount of Rs.1,25,000/- and the court below passed an order on 17.11.2016 stating that the defence of the appellant was struck off and posted the suit for judgment on 29.11.2016. In these circumstances, the appellant filed Civil Revision Petitions against the order of striking off the defence and the same are pending in C.R.P.Nos.127 and 155 of 2016. In the meantime, the court below decreed the suit, directing the appellant to return the jewels as claimed by the respondents or its money value and also past and future maintenance to the respondents. Hence, the present First Appeal has been filed by the appellant.

8. When the matter is taken up for consideration, the only submission made by the learned counsel for the appellant is that the appellant was not heard by the trial Court. Since the conditional order by the Family Court, Salem, has not been complied with by the appellant by paying the arrears of interim maintenance, his defence was struck off. Learned counsel for the appellant further submitted that now the appellant is prepared to pay the arrears of interim maintenance of Rs.3,00,000/- and thus, prayed this Court to set aside the judgment and decree and remit back the matter for fresh consideration.

9. Learned counsel for the respondents opposed the contention of the learned counsel for the appellant that the appellant was not heard by the trial Court stating that the appellant had cross examined P.W.1 and P.W.2. Since the appellant was absent for two hearings i.e., on 15.11.2016 and 17.11.2016 and did not pay the arrears of interim maintenance, the defence of the appellant/defendant was struck off. Therefore, it cannot be said that the order was passed by the trial Court without considering the merits of the case and without giving an opportunity to the appellant.

10. Irrespective of the submissions made on either side, we are of the opinion that since the appellant has now expressed his intention to deposit Rs.3,00,000/-, the trial Court shall be directed to take up the matter and proceed with the trial and complete the same by affording an opportunity of hearing to the appellant and decide the matter in one way or the other and pass orders on or before 31.01.2019.

11. In the result, the First Appeal is allowed. The judgment and decree passed by the Family Court, Salem, in O.S.No.25 of 2010 dated 03.12.2016 are set aside and the matter is remitted back to the Family Court, Salem, subject to the condition, the appellant deposits a sum of Rs.3,00,000/- (Rupees Three Lakhs only) to the credit of O.S.No.25 of 2010 on the file of Family Court, Salem, within a period of six weeks from the date of receipt of a copy of this order. On such payment, the Family Court, Salem, shall take up the suit in O.S.No.25 of 2010 and proceed with the trial and dispose of the same on or before 31.01.2019, after affording an opportunity of hearing to the appellant. In the event of failure to deposit the aforesaid amount by the appellant as stated supra, the judgment and decree dated 03.12.2016 passed by the Family Court, Salem, will stand. No costs. Consequently, connected miscellaneous petitions are closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vsi

To

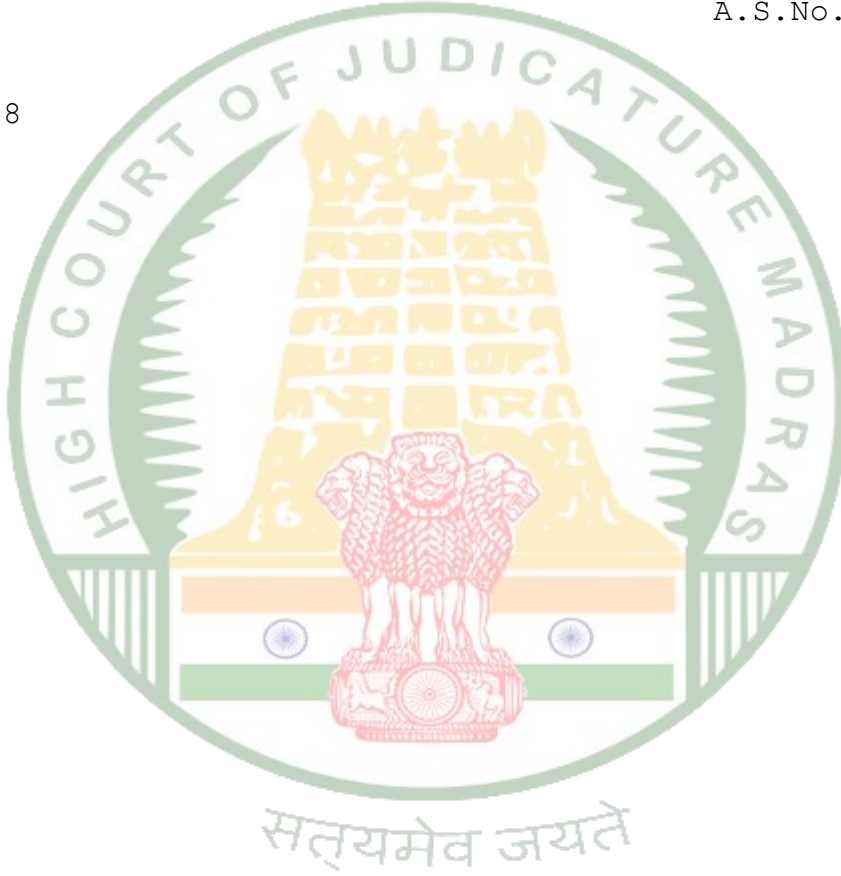
1. The Judge,
Family Court, Salem.
2. The Section Officer,
VR Section, High Court,
Madras (2 Copies)

+1cc to Mr.M.Vijayakumar, Advocate, S.R.No.47738

+1cc to Mr.S.Kanniah, Advocate, S.R.No.47927

A.S.No.128 of 2017

VGII(CO)
CS/05/09/18



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