

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2018

CORAM :

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

S.A.No.687 of 2017
and C.M.P.No.17662 of 2017

Soundararajan ... Appellant/Defendant in Trial Court
vs.

1. S.Loganayagi
2. S.Sreenivasan ... Respondents/Plaintiffs in trial Court

Prayer: This second appeal is filed under Section 100 of Code of Civil Procedure praying to set aside the Judgment and Decree dated 05.09.2012 made in A.S.No.17 of 2011 on the file of the learned Principal Subordinate Judge, Erode confirming the Judgment and Decree dated 20.12.2010 made in O.S.No.1657 of 2004 on the file of learned Principal District Munsif, Erode and thereby allow this Second Appeal.

For Appellant : Mr.B.Gopalakrishnan
For Respondents : Mr.S.S.Swaminathan

J U D G M E N T

Aggrieved by the unanimous decisions of the Courts below in a suit filed by the respondent/wife and the minor son in a matrimonial dispute, the husband/defendant has filed this second appeal.

2. The plaintiffs are the wife and son respectively. The suit was filed by the plaintiffs claiming past maintenance and for payments of Rs.1,000/- p.m. as maintenance to the first plaintiff and Rs.1,500/- p.m. as maintenance to the second plaintiff from the date of suit, till the second plaintiff attains majority. The appellant, who is the defendant, filed his written statement and contested the suit. He has stated that the first plaintiff/wife is living away from the matrimonial home without any specific cause. It is also stated that she has been employed with the Government and earning more than Rs.10,000/- p.m. However, the appellant had admitted that he is willing to undertake educational expenses for the second plaintiff/son.

3. Earlier, the husband had filed H.M.O.P.No.95 of 1999 for divorce. The same was dismissed, against which the appellant had filed C.M.A.No.20 of 2003, which was also dismissed.

4. The learned counsel for the appellant argued that the first plaintiff is employed in Annai Sathya Co-operative Society and earning a salary of Rs.5,120/- p.m., besides, getting an income of Rs.10,000/- from two of the houses owned by her. The second plaintiff/minor son has attained majority on 11.05.2008. Therefore, the learned counsel contended that the plaintiffs/respondents do not deserve maintenance from the appellant. The appellant had also filed I.A.No.633 of 2011 to show that the first plaintiff/wife has been getting an income of more than Rs.10,000/- p.m.

5. Before the trial Court, on the side of the plaintiffs, P.W.1 and P.W.2 were examined and Exs.A1 & A2 were marked. On the side of the defendant, D.W.1 and D.W.2 were examined and Ex.B2 was marked.

6. The Courts below had concurrently held that the plaintiffs are entitled for a decree and accordingly granted the past maintenance of Rs.1,000/- p.m. for the first plaintiff and Rs.1,500/- p.m. for the second plaintiff from the date of suit, till the life time of the first plaintiff and till the minor son attains majority. Aggrieved by the said decision the above second appeal is preferred.

7. The first plaintiff/wife and the second plaintiff/son have filed a caveat.

8. Heard both sides. The learned counsel appearing for the appellant contended that he is willing to take the wife and child, back to the matrimonial home. However, it is relevant to note that the finding of the Appellate Court is that even after the dismissal of his divorce O.P., which was confirmed by the Appellate Court, the defendant had never made such an offer. Even presuming that the offer is genuine, he has not produced any evidence to show that he made any such attempt to take the family back. Even otherwise, the income of the first plaintiff is not sufficient for running a family and therefore, the Courts below had felt that the maintenance amount has to be ordered for the plaintiffs. Even presuming that the first plaintiff had got an increase in salary that does not mean that liability of the appellant/husband to pay the maintenance can be absolved. Hence, the trial Court has rightly granted the decree, which was confirmed by the Appellate Court and this Court finds no infirmity in the same.

9. In the result, the second appeal is dismissed, confirming the Judgment and Decree dated 05.09.2012 passed by the learned Principal Subordinate Judge, Erode in A.S.No.17 of 2011 and the Judgment and Decree dated 20.12.2010 passed by the learned Principal District Munsif, Erode, in O.S.No.1657 of 2004. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

rsi

To

1. The Principal Subordinate Judge,
Erode.
2. The Principal District Munsif,
Erode.

+1 CC to Mr.D.S. Swaminathan, Advocate sr 21207.

+1 Cc to Mr.B.Gopalakrishnan, Advocate sr 21016.

S.A.No.687 of 2017
and C.M.P.No.17662 of 2017

AD(CO)
SP(26/03/2018)

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