

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2018

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THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.M.S.A.Nos.37 and 38 of 2015

Pichandi ... Appellant in both CMSAs
verses
Amsaveni Ammal ... Respondent in both CMSAs

Common prayer : The Civil Miscellaneous Second Appeals are filed under Section 28 of Hindu Marriage Act, 1955, against the Judgment and Decree dated 18.06.2015 in C.M.A.Nos.03 and 04 of 2012 on the file of learned Principal District Judge, Vellore. Confirming the fair and decreetal order dated 09.09.2011 in IA No.79 & 187/2006; in HMOP No.44/98 on the file of Subordinate Court, Vellore.

For Appellant : Mr.T.R.Rajaraman
in both CMSAs for M/s.D.Chitra Maragatham
For Respondents
in both CMSAs : Mr.M.Devaraj

COMMON JUDGMENT

The relief sought for in the Civil Miscellaneous Second Appeals is to set aside the Judgments and Decrees dated 18.06.2015 in C.M.A.Nos.03 and 04 of 2012 on the file of learned Principal District Judge, Vellore.

2. The appellant is the husband and the respondent is the wife. The respondent filed a petition in H.M.O.P.No.44 of 1998 before the learned Subordinate Judge, Vellore to pay the cost on the ground that the marriage was dissolved on 21.02.1986. Since the appellant herein has not appeared, an Ex-parte order was passed in favour of the respondent.

3. Thereafter, the respondent filed an Interlocutory application before the trial Court in I.A.No.79 of 2006 in H.M.O.P.No.44 of 1998 for permanent alimony of Rs.5,00,000/- and the appellant filed an Interlocutory application in I.A.No.197

of 2006 in H.M.O.P.No.44 of 1998 to show his willingness to pay a sum of Rs.2,00,000/- as permanent alimony. After hearing both sides, the trial Court allowed I.A.No.79 of 2006 filed by wife and dismissed the I.A.No.187 of 2006 filed by husband.

4. Aggrieved against the said orders dated 09.09.2011, the appellant and respondent filed two Civil Miscellaneous Appeals in CMA Nos.03 and 04 of 2015 before the learned Principal District Judge, Vellore respectively. After contest, the learned Judge dismissed both the appeals on merits.

5. Challenging the orders dated 18.06.2015, the both husband and wife are before this Court by way of the above Civil Miscellaneous Second Appeals.

6. I heard Mr.T.R.Rajaraman for M/s.D.Chitra Maragatham, learned counsel appearing for the appellant and Mr.M.Devaraj, learned counsel for the respondent and perused the materials available on record.

7.It is the case of the appellant is that both the Court below have no right to pass orders in respect of interim maintenance at the rate of Rs.750/- p.m. and permanent alimony a sum of Rs.2,00,000/- simultaneously. The Court should pass orders only either interim maintenance or permanent alimony. But, in this case, both the Courts below passing orders by granting interim maintenance at the rate of Rs.750/- p.m. and permanent alimony a sum of Rs.2,00,000/-, which is totally illegal. Therefore, the learned counsel for the appellant seeks for setting aside the order passed in both the appeals.

8.The learned counsel for the respondent argued that though both the applications were filed separately in which one application filed by this respondent for interim maintenance whereas the other application filed by the appellant for permanent alimony. There is no restriction the Court below for granting both the interim maintenance as well as the permanent alimony. Therefore, both the appeals are ought to be dismissed, since the respondent/ wife is entitled for both the interim maintenance and for permanent alimony.

9.It is my absolute view that the Courts below while passing orders have shown their judicial mind that once an interim maintenance order has been granted, no permanent alimony should be entertained. If the permanent alimony is granted, the interim maintenance ought not to have considered. But, in this case, the trial Court which was confirmed by the First Appellate Court is totally wrong, since the Courts below granted interim maintenance at the rate of Rs.750/- p.m. and permanent alimony a sum of Rs.2,00,000/- which is totally against the law.

10.After hearing both sides, when this Court put a question before both the learned counsels, the learned counsel for the respondent has agreed that he may be granted the interim maintenance at the rate of Rs.2000/- p.m., but on the other hand, the learned counsel for the appellant says that he is ready to pay the permanent alimony, but not the interim maintenance. Therefore, in the interest of justice, I am considered that it is correct to grant only in respect of permanent alimony a sum of Rs.2,00,000/- with interest at the rate of 9% p.a.

11.Therefore, I am inclined to pass the following orders:

(a) both the Civil Miscellaneous Second Appeals are disposed of;

(b) the appellant/husband is directed to pay the permanent alimony a sum of Rs.2,00,000/- with interest at the rate of 9% p.a., which comes to a sum of Rs.3,16,000/-;

(c) out of the said amount Rs.3,16,000/-, the appellant/husband is directed to pay a sum of Rs.1,50,000/- on or before 07.01.2019 and thereafter pay the balance amount on or before 07.03.2019. No costs.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1. The Principal District Judge, Vellore.

2. The Subordinate Judge, Vellore.

+1cc to Mrs.D.Chitramaragadam, Advocate SR.No.83250

C.M.S.A.Nos.37 and 38 of 2015

GJ(CO)

GMV(03/01/2019)