

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.01.2019

Coram

THE HONOURABLE MS. JUSTICE P.T.ASHA

S.A.No.137 of 2018
and
CMP.No.3226 of 2018

N.Manoharan ... Appellant/Defendant

Versus

1. Tmt.Vasantha

2. Selvi Snekalatha

3. Selvi Aadhira ... Respondents/Plaintiffs

Prayer :

Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the Judgment and Decree of the learned Subordinate Judge, Udhagamandalam in A.S.No.27 of 2014 dated 12.09.2016 confirming the judgment and decree of the learned District Munsif, Gudalur in O.S.No.53 of 2010 dated 08.08.2014.

For Appellant : Mr.J.Franklin

For Respondents: ---

J U D G M E N T
सत्यमेव जयते

The defendant/husband is the appellant before this court. The second appeal arises against the concurrent judgment and decree granting maintenance to the plaintiffs and creating a charge over the suit properties belonging to the plaintiffs. The parties are referred in the same array as in the suit and the following are the facts which has culminated in the filing of the above second appeal.

2. The 1st plaintiff and the defendant are husband and wife and the plaintiffs 2 and 3 are girl children born to them on 08.07.1993 and 28.02.1996 respectively. The marriage between the 1st plaintiff and the defendant was solemnised on 30.08.1992. It

is the case of the 1st plaintiff that the defendant was prone to abuse and he would constantly beat the 1st plaintiff more so after she had given birth to a female child. He would throw her out of the matrimonial home and she would return after mediation talks were held. Ultimately the 1st plaintiff was constrained to leave her matrimonial home when the defendant had refused to admit the children in the school and the defendant had started abusing her and the children. The plaintiff moved to her maternal home and it was her mother who had admitted the girls in the school, she and her children are being taken care of by her brothers and mother.

3. The 1st plaintiff would contend that the defendant is earning more than Rs.20,000/- per month only from the properties and he also has other sources of income but has refused to pay even a single penny to the plaintiffs for their maintenance. The defendant in order to escape the claim of maintenance had sent a legal notice to the 1st plaintiff on 25.11.2009 seeking restitution of conjugal rights. To this the 1st plaintiff had sent a very detailed reply setting out the facts in perspective and explaining why it is futile to rejoin the defendant. demanding maintenance. The defendant received the said notice and sent a meagre sum of Rs.1,000/- each for the months of February and March 2010 and thereafter no amounts had been paid by him. The plaintiffs came to learn that the defendant is trying to alienate the properties so as to ensure that it is out of the reach of the plaintiffs. Therefore left with no other alternative the plaintiffs have come forward with the said suit.

4. The above suit was resisted by the defendant inter alia denying the allegations contained in the plaint and contending that it was the 1st plaintiff who was not able to stay in her matrimonial home since, the defendant had a aged mother who was a rheumatic patient and was unable to look after herself. It is the case of the defendant that the 1st plaintiff had left the matrimonial home only because she feared that she would be burdened with the task of nursing her mother-in-law. The defendant denied the income attributed to him in the plaint and stated that he is earning a very low income and he is not in a position to pay the amount as claimed by the plaintiffs. On the contrary he would submit that the 1st plaintiff was possessed of ancestral property and derived more than Rs.40,000/- per year out of the said properties and that she was also employed and earning well. He also contended that if the plaintiffs were to rejoin him then the income could be pooled together and the parties could lead a better life.

5. The learned District Munsif, Gudalur by his judgment and decree dated 08.08.2014 decreed the suit as prayed for. Challenging the said judgment and decree the defendant had filed A.S.No.27 of 2014 on the file of the Sub Court, Udhagamandalam. The learned Subordinate Judge also conformed the judgment and decree of the learned District Munsif. Challenging the said judgment and decree the defendant is before this court.

6. Heard, Mr.J.Franklin for the defendant/appellant.

7. On perusal of the record, it would clearly indicate that the defendant has deliberately deserted the plaintiffs and despite his petition for restitution of conjugal rights being ordered in his favour he has not taken any steps whatsoever to bring back his wife and children which would itself speak volumes about his true intentions. It is clear that the above petition had been filed only to escape the payment of maintenance. It is also seen from the admission of the defendant as D.W.1 that he owns property and he has not been contributing much to the education of the 2 children who are teenagers. It is the matter of knowledge that without any income bringing up 2 children, particularly teenage girl children would involve considerable expenses and the father who is under a bounden duty to take care of the children and his wife has abdicated his responsibility. The burden of taking care of them has fallen on the shoulders of the 1st plaintiffs' mother and brothers. The defendant is legally bound to maintain his wife and children, the defendant has not come forward with any question of law much less a substantial question of law warranting this court's interference in the concurrent judgment and decree. Therefore, I do not find any infirmity in the judgment and decree of the courts below.

8. In the result, the second appeal stands dismissed. The order of the courts below stand confirmed. However, there shall be no order as to costs. Consequently, the connected Civil Miscellaneous Petition is closed.

sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

msvm

To

1. The Subordinate Judge,
Udhagamandalam.

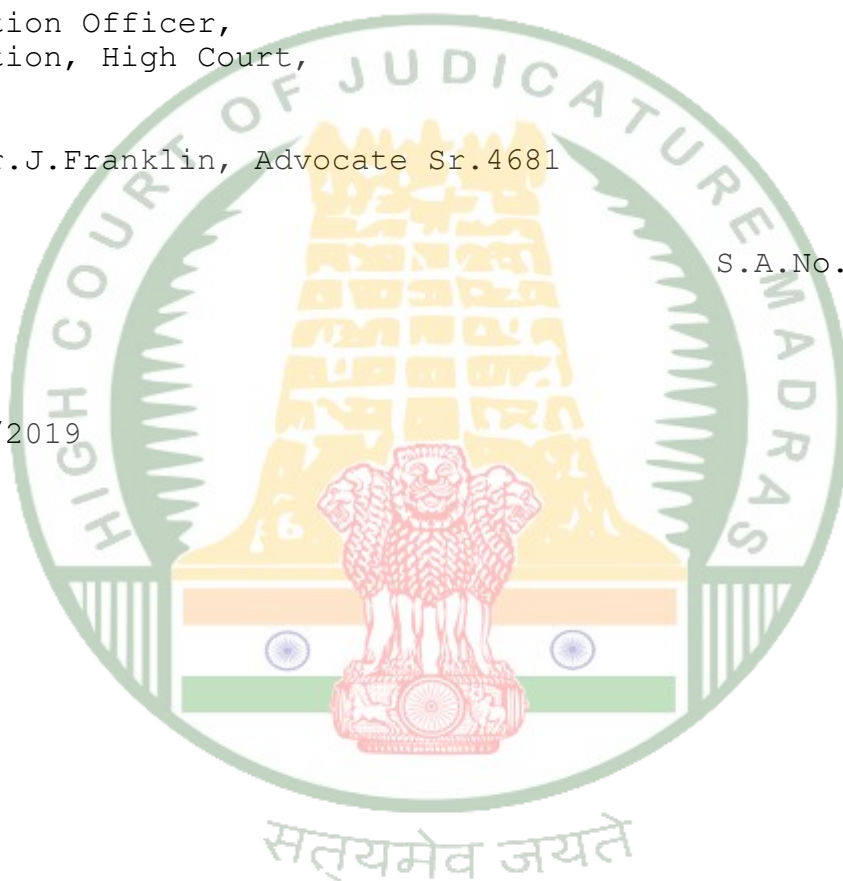
2. The District Munsif,
Gudalur.

3. The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.J.Franklin, Advocate Sr.4681

S.A.No.137 of 2018

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srg 24/04/2019



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