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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03-12-2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.No.637 of 2019

And

C.M.P.No.19163 of 2019

Neduncheliyan .. Appellant/Defendant

vs.

1.Minor N.Kaviah

2.Minor N.Maolika

Minors represented by next friend, Guardian/
mother S.Renuka,
No.137, Sidhu Mariamman Kovil Street,
Old Sooramangalam,
Salem District.

.. Respondents/Plaintiffs

Appeal under Section 96 of the Code of Civil Procedure, 1908, read with Order 41, Rule 1 of the Code of Civil Procedure, 1908 against the judgment and decree made in O.S.No.12 of 2014 on the file of the Family Court, Salem dated 26.07.2018.

For Appellant : Mr.S.N.Subramani
For Respondents : Mr.R.Thiagarajan

J U D G M E N T

The present First Appeal is filed against the judgment and decree passed by the learned Family Court Judge, Salem in O.S.No.12 of 2014 dated 26.07.2018.

2. The defendant is the appellant in the present First Appeal and the respondents/plaintiffs filed the suit claiming maintenance.

3. The maintenance was mainly claimed to meet the expenditure of the minor children born from and out of the wedlock between S.Renuka, mother of the minor children as well as defendant-Neduncheliyan.



4. The Trial Court adjudicated the issues and during the pendency of the Civil Suit, the appellant/defendant filed a memo on 26.07.2018. The memo was filed by the appellant/defendant on account of the mediation conducted by the Trial Court. Based on the memo, the Trial Court delivered a judgment and made a finding in paragraph-16 of the judgment that "when the matter was posted for cross-examination of PW-1, the defendant agreed to pay a sum of Rs.3,500/- per month each to the minor plaintiffs, based on the mediation effected by this Court between the parties to the suit. Further, the defendant has also wanted to visit both the children twice in a month, which is agreed by the mother/guardian of the minor plaintiffs".

5. Recording the said terms agreed by the parties to the Civil Suit, the suit was decreed in favour of the plaintiffs, granting the monthly maintenance of Rs.3,500/- to each of the plaintiffs 1 and 2. The maintenance was directed to be paid till the marriage of the plaintiffs 1 and 2. The appellant/defendant is directed to pay the regular monthly maintenance amount on or before every 5th day of every English calendar month. The appellant/defendant is also directed to remit the arrears amount of maintenance within 3 months from the date of passing of the decree. The decree was passed by consent and more specifically, based on the memo filed by the appellant/defendant. That being so, the appellant/defendant has chosen to file the present First Appeal, challenging the judgment and decree passed in O.S. No.12 of 2014 dated 26.07.2018.

6. The learned counsel appearing on behalf of the respondents/plaintiffs raised a preliminary objection with regard to the maintainability of the appeal as the judgment and decree was passed by the Trial Court based on the compromise resulted from and out of mediation proceedings conducting during the trial. Thus, the appeal itself cannot be entertained as it was a consent decree.

7. The learned counsel appearing on behalf of the appellant/defendant is unable to dispute the fact regarding filing of the memo by the appellant/defendant as well as recording of the same by the Trial Court in its judgment.

8. This being the factum, this Court is of an opinion that filing of an appeal itself is impermissible even on merits. This Court is of the considered opinion that the appellant/defendant, who is the father of the minor children, is liable to pay maintenance and further, the appellant/defendant is working as a teacher in a Government School and drawing the Government salary.



9. That being the factum, the appellant/defendant has no option but to pay the maintenance as decreed by the Trial Court and pay the arrears within a period of two months from the date of receipt of a copy of this judgment in the First Appeal.

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10. Maintenance is a fundamental right. Minor children has got a right of maintenance. Denial of maintenance would affect the livelihood of the minor children and more-so, it is brought to the notice of this Court that one of the minor children is suffering from certain ailments and taking treatment continuously.

11. Under those circumstances, it would be very difficult for the mother to meet out the entire medical expenses as well as the other expenses of the children, including the education expenses. The appellant/defendant, who is the father of the minor children, is working as a teacher, is capable of maintaining the children and even the amount of maintenance fixed is very less as far as this Court is concerned. Since this being the First Appeal, this Court is not inclined to consider for enhancement of the maintenance and it is left open to the respondents/plaintiffs to file appropriate petition for enhancement if they are chosen to do so.

12. Under these circumstances, the appeal filed by the appellant/defendant cannot be maintained as the judgment and decree was passed based on the memo filed by the appellant/defendant and under these circumstances, the judgment and decree passed in O.S. No.12 of 2014 dated 26.07.2018 is confirmed and A.S.No.637 of 2019 stands dismissed. The appellant/defendant is directed to settle the arrears of maintenance, within a period of six weeks from the date of receipt of a copy of this judgment.

13. Accordingly, the present First Appeal stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-III MDU)

//True Copy//

Sub Assistant Registrar

Svn



To

The Judge,
Family Court,
Salem.

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+1cc to Mr.S.N.Subramani, Advocate, S.R.No. 100780
+1cc to Mr.R.Thiagarajan, Advocate, S.R.No. 101018

A.S. No.637 of 2019

SVI (CO)
GN (01/09/2020)