

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :08.07.2019

PRONOUNCED ON: 18.07.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.728 of 2019
and
C.M.P.No.13873 of 2019

K.M.Palanisamy ...Respondent/Appellant/Appellant

Vs.

V.K.Sagunthala Devi ...Plaintiff/Respondent/Respondent

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree of the Subordinate Judge of Sathyamangalam dated 07.02.2019 in A.S.No.20 of 2018 partly confirming the judgment and decree of the District Munsif, Sathyamangalam dated 16.11.2017 in O.S.No.130 of 2016.

For Appellant : Mr.S.A.Mohamed Mubarak

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 07.02.2019 passed in A.S.No.20 of 2018 on the file of the Subordinate Court, Sathyamangalam, confirming the judgment and decree dated 16.11.2017 passed in O.S.No.130 of 2016 on the file of the District Munsif Court, Sathyamangalam.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

3. The suit has come to be laid by the plaintiff seeking for the enhancement of maintenance in a sum of Rs.9,750/- from the defendant and for creating charge over the plaint schedule properties for the abovesaid claim of maintenance.

4. According to the plaintiff, she had been already granted maintenance in the proceedings laid by her in O.S.No.213 of 2002 on the file of the Subordinate Court, Gopichettipalayam, both past and future maintenance and the same had also been confirmed by this Court in S.A.No.419 of 2010 and according to the plaintiff, on account of her old age ailments and arthritis, she is unable to do work and has to incur considerable amount towards the medical expenses and considering the steep rise in the price of the commodities and the inflation rate having gone high, according to the plaintiff, she is unable to maintain even her basic needs with the amount of maintenance ordered to be paid by the defendant in her favour i.e., the amount of Rs.1,500/- per month and accordingly putting forth that she needs augment of income by way of maintenance on various grounds as setout in the plaint, has come forward with the suit claiming enhancement maintenance of sum of Rs.9,750/- from the defendant and the creation of the charge of the plaint schedule properties with reference to the same.

5. The defendant resisted the plaintiff's suit contending that the plaintiff is not entitled to seek the enhancement of maintenance and further contended that the plaintiff is having considerable properties and deriving income therefrom and therefore the plaintiff is not entitled to enhance the maintenance amount and further also putforth that the claim of enhanced maintenance on the part of the plaintiff towards medical expenses and other heads are not true and false and accordingly, prayed for the dismissal of the plaintiff's suit.

6. Based on the materials placed on record by the respective parties and the submissions made, the Courts below were pleased to determine that the plaintiff is entitled to seek the enhanced maintenance in a sum of Rs.4,000/- and accordingly granted the abovesaid relief in favour of the plaintiff and also by creating charge in respect of the suit properties and accordingly disposed of the plaintiff's suit. Impugning the same, the present second appeal has been laid.

7. As could be seen from the materials placed on record, the plaintiff and the defendant get separated by way of divorce and the plaintiff had sought for maintenance from the defendant in O.S.No.213 of 2002 and in the abovesaid proceedings, it is found that the plaintiff had been held to be entitled to claim maintenance of a sum of Rs.1500/- per month and the same has also been confirmed by this Court in S.A.No.419 of 2010. Even in the abovesaid proceedings, the defendant has putforth the claim that the plaintiff has got more properties and deriving income therefrom and hence not entitled to claim maintenance. However, the abovesaid plea of the defendant had been turned down in the abovesaid proceedings and in such view

of the matter, the claim now made by the defendant that the plaintiff owns various properties and deriving income therefrom and therefore not entitled to seek the enhanced maintenance, as such, cannot be accepted, particularly, as rightly determined by the Courts below, when there is no proof or material on the part of the defendant pointing to the same.

8. The plaintiff has claimed enhanced maintenance of a sum of Rs.9750/- per month. The plaintiff has claimed the abovesaid maintenance on various heads. As rightly determined by the Courts below, the plaintiff has not buttressed her claim of enhanced maintenance under the head of medical expenses. However, as rightly found and determined by the Courts below, considering the high rate of inflation of the price of various commodities as at present and the necessity of the plaintiff to satisfy her basic needs, in such view of the matter, it is found that, in toto, held that the plaintiff is entitled to seek the enhanced claim of maintenance at the rate of Rs.4000/- per month and accordingly also created a charge in respect of the plaint schedule properties as determined by them and when the abovesaid determination of the Courts below is found to be based on the proper appreciation of the materials placed on record in the right perspective and also the status of the parties concerned and the abovesaid determination of the Courts below centering on factual matrix and not found to be suffering from any perversity or irrationality in any manner, in such view of the matter, I do not find any valid reason to interfere with the concurrent judgment and decree of the Courts below upholding the plaintiff's case as determined by them.

9. For the reasons aforesaid, no substantial question of law is found to be involved in this second appeal. Accordingly, the second appeal is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

सत्यमेव जयते
Assistant Registrar (CO MDU)

//True copy//

Sub Assistant Registrar

mfa

To

1. The Subordinate Judge,
Subordinate Court,
Sathyamangalam.

2.The District Munsif,
District Munsif Court,
Sathyamangalam

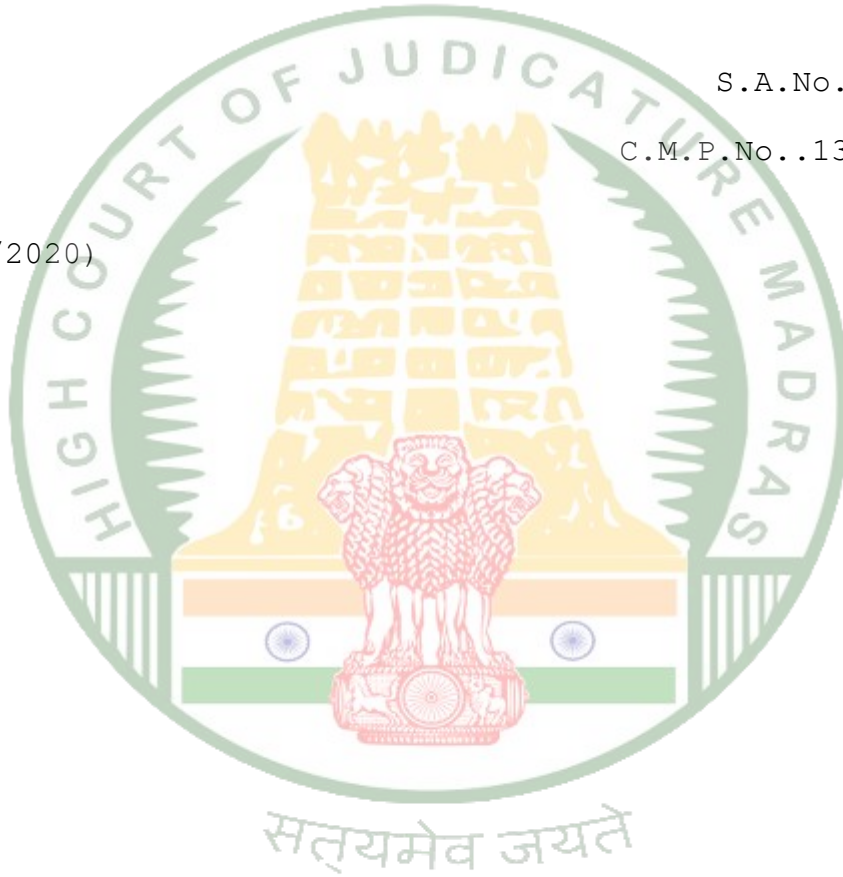
Copy to

The Section Officer,
VR Section,
High Court,
Chennai.

+1cc to Mr.S.A.Mohamed Mubarak, Advocate SR.No.61454

S.A.No.728 of 2019
and
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BP (CO)
GMY (18/08/2020)



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