

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-12-2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.No.999 of 2014

And

M.P.No.1 of 2014

V.C.Sundaramoorthi

.. Appellant/Defendant

vs.

1.Indira

2.Minor Naveen

3.Minor Kaviya

(R-2 and R-3 represented by

R-1 being their mother and next friend)

.. Respondents/Plaintiffs

First Appeal is filed under Orders 41 and 41-A of Code of Civil Procedure read with Section 96 of the Code of Civil Procedure, against the judgment and decree dated 24.08.2011 made in O.S. No.13 of 2010 on the file of the learned Additional District Judge (FTC), Tirupattur, Vellore District.

For Appellant : Mr.R.Bharanidharan

For Respondents : No Appearance

J U D G M E N T

The appeal suit on hand is filed against the judgment and decree dated 24.08.2011 passed by the learned Additional District Judge (FTC), Tirupattur, Vellore District in O.S.No.13 of 2010.

2. The defendant is the appellant and the plaintiffs are the respondents in the appeal suit.

3. The suit is filed claiming maintenance for the minor children, who all are respondents 2 and 3 as well as the first respondent.

4. The Trial Court decreed the suit, directing the appellant to pay each Rs.5,000/- to two minor children and declined to grant any maintenance to the first respondent/first plaintiff.

5. The learned counsel appearing on behalf of the appellant mainly contended that the first respondent is none other than the daughter-in-law of the appellant and respondents 2 and 3 are the grandchildren.

6. On account of sudden demise of the son of the appellant, the properties due to the son of the appellant were divided and the same were handed over to the first respondent, enabling her to lead her life without any difficulty.

7. In respect of the shares of the son of the appellant and the transfer of the said properties, they were established through Ex.B-6, which was accepted by the Trial Court.

8. At the outset, the shares due to the deceased son of the appellant were already taken possession by the first respondent and the children are also received their shares respectively.

9. Despite the fact that the first respondent as well as the second and third respondents are having sufficient means for their livelihood, the suit is filed claiming maintenance.

10. The Trial Court, though admitted the document, more specifically, Ex.B-6 granted maintenance only for the minor children during the relevant point of time.

11. The learned counsel for the appellant mainly contended that the first respondent is also well off and she is working as a Teacher in a Government School and capable of maintaining respondents 2 and 3, who were minors during the relevant point of time.

12. This apart, it is brought to the notice of this Court that as of now, respondents 2 and 3 attained the age of majority and became majors. Thus, the appellant need not continue to pay maintenance. Even on earlier occasions, the appellant had taken efforts to settle the maintenance amount and the first respondent was not interested in receiving the amount nor taken any steps to file an execution petition or to recover the maintenance amount from the appellant. When no steps are taken by the respondents, the settlement of arrears of maintenance would not arise at all.

13. This apart, the appellant also had taken initiatives to settle the maintenance amount as per the decree and his efforts were went in vain.

14. This being the facts and circumstances, this Court is of an opinion that, at this length of time, the judgment and decree cannot be sustained and further more, the respondents 2 and 3 were minors during the relevant point of time when the suit was instituted and now they attained the age of majority and even for claiming any arrears, they are not interested and so far, they have not taken any steps for recovery of maintenance amount or filed any execution petition in this regard.

15. It is pertinent to note that notice was served to all the respondents long back and in spite of that, they have not chosen to appear before this Court in order to defend their case. The very conduct of the respondents are self-evident that there are not interested in pursuing the remedy and even otherwise also, respondents 2 and 3, against whom maintenance was granted, have attained the age of majority and as of now, they have not initiated any steps to recover the arrears of maintenance by filing appropriate petitions.

16. This being the facts and circumstances, the judgment and decree dated 24.08.2011 passed by the learned Additional District Judge (FTC), Tirupattur, Vellore District in O.S.No.13 of 2010 is set aside and consequently, the appeal suit stands allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO MDU)

//True copy//

Sub Assistant Registrar

Svn
To

The Additional District Judge (FTC),
Tirupattur, Vellore District.

+1cc to Mr.R.Karthikeyan, Advocate SR.No.102609

A.S.No.999 of 2014

GJ (CO)
GMY (14/09/2020)