



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated : 03.07.2019
CORAM :

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

Second Appeal (MD) No. 785 of 2016
and
C.M.P. (MD) No. 12464 of 2016

Chelliah Pillai : Appellant/Appellant/Defendant

-Vs-

Sankara Vadivammal : Respondent/Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of the Code of the Civil Procedure, praying to set aside the judgment and decree passed in A.S.No.46 of 2015 on the file of the Sub Court, Ambasamudram, dated 29.09.2016 confirming the judgment and decree passed in O.S.No.153 of 2010 on the file of the Principal District Munsif Court, Ambasamudram, dated 22.12.2014 by allowing the above Second Appeal.

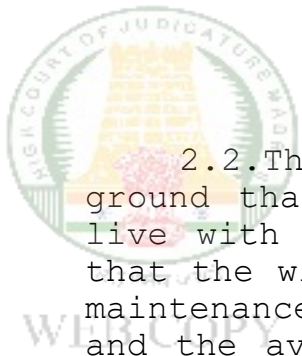
For Appellant : Mr.T.Selvan
For Respondent : Mr.H.Arumugam

JUDGMENT

This Second Appeal is preferred by the husband who is the defendant in the suit in O.S.No.153 of 2010 on the file of the Principal District Munsif Court, Ambasamudram, filed by the respondent/wife for maintenance.

2.The brief facts that are necessary for the disposal of this Second Appeal are as follows:

2.1.The marriage between the appellant and the respondent was solemnised in 1974. It is admitted that the appellant and the respondent have separated. Though a petition was filed by the husband for restitution of conjugal rights, the same was allowed to be dismissed for default. It is admitted before this Court that the husband is now living with another lady and therefore, there is no possibility for reunion. Stating that the husband had driven her from her matrimonial home, the wife filed the suit for maintenance claiming a sum of Rs.90,000/- towards past maintenance with interest at 12% and for creating a charge over the property of the appellant. The suit is also for permanent injunction restraining the appellant from alienating or encumbering the charged properties till the time of the plaintiff.



2.2.The suit was contested by the appellant mainly on the ground that the wife has deserted him and she is not prepared to live with the appellant for no fault of him. Apart from stating that the wife, who deserted the appellant, is not entitled to claim maintenance, it is pleaded that the appellant is not a man of means and the averments of the plaintiff about the financial status and acquisition or existence of asset have been specifically denied. It is also stated that the respondent's son is employed in a popular textile retail store and therefore, the respondent is not living in penury so as to get maintenance from the appellant.

2.3.After framing necessary issues, the trial Court answered the factual issues raised by the appellant against him. However, the suit was partly decreed. The trial Court directed the appellant to pay a sum of Rs.54,000/- (Rupees Fifty Four thousand only) towards past maintenance calculating at Rs.1,500/- per month and directed charge being created over the property shown in the plaint. Aggrieved by the same, the appellant preferred an appeal in A.S.No.46 of 2015 and the appellate Court also confirmed the findings of the trial Court and dismissed the appeal with costs. Aggrieved by the concurrent judgment and decrees of the Courts below, the present Second Appeal is filed.

3.The learned Counsel appearing for the appellant submitted that the Courts below have decreed the suit despite the fact that the respondent has not proved her case by oral and documentary evidence. It is further stated by the learned Counsel appearing for the appellant that the wife is not living with the husband and therefore, she is not entitled to get maintenance from the husband. The Courts below have concurrently held that the respondent has not deserted the appellant/husband and that the appellant has contracted second marriage with another lady. In these circumstances, this Court is unable to accept the contention that the wife had deserted the appellant voluntarily and she voluntarily left the husband. With regard to the existence of properties, there is no controversy. It is also stated by the wife that the appellant/husband is employed. The Court on proper appreciation of facts came to the conclusion that the appellant is liable to pay a sum of Rs.54,000/- (Rupees fifty four thousand only) as past maintenance by calculating the maintenance at Rs.1,500/- per month. The maintenance amount claimed by the respondent is refused on the specific allegation that the appellant/husband had deserted the wife and refused to maintain the wife for several years. Having regard to the fact that only a meagre amount of Rs.1,500/- has been taken as monthly maintenance, this Court is unable to accept the contention of the learned Counsel appearing for the appellant that the maintenance amount is on the higher side considering the facts relating to the financial status of the appellant.



Counsel for the appellant relied upon Section 18 of the Hindu Adoption and Maintenance Act, 1956, no legal argument was developed by the learned Counsel for the appellant relying upon the said provision.

5. Since the Courts below have considered all the aspects and the findings of the Courts below are supported by materials and reasons, this Court is unable to interfere with the findings by exercising its jurisdiction under Section 100 of C.P.C. Accordingly, this Second Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Subordinate Court,
Ambasamudram.

2. The District Munsif Court,
Ambasamudram.

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The Section Officer,
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Madurai Bench of Madras High Court,
Madurai.

+1 CC to MR.H.ARUMUGAM, Advocate (SR-73452[F] dated 04/07/2019)
+1 CC to MR.T.SELVAN, Advocate (SR-73830[F] dated 05/07/2019)

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