



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.10.2019

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THE HONOURABLE **MS.JUSTICE P.T.ASHA**

S.A. (MD)No.245 of 2015

S.Srikumar ... Appellant/Appellant/Plaintiff

Vs.

P.Jayakumari ... Respondent/Respondent/Defendant

PRAYER:- Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 20.06.2014 and made in A.S.No.74 of 2011 on the file of the Subordinate Judge, Kuzhithurai confirming the judgment and decree dated 09.06.2011 made in O.S.No.297 of 2009 on the file of the Principal District Munsif, Kuzhithurai.

For Appellant : M/s.Krishnaveni
Senior Counsel for
Mr.P.Thiagarajan

For Respondent : Mr.B.Christopher

JUDGMENT

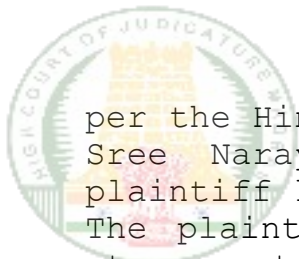
The unsuccessful plaintiff in the Courts below is the appellant before this Court.

2.The plaintiff, who had lived with the defendant as man and wife for seven years and out of the wed-lock, got a son, has filed a suit for declaring the marital relationship between them as null and void and for injunction restraining the defendant from interfering with his wedded life with one Rajeshwari.

3.Brief facts that are necessary to dispose of the above second appeal are as follows:

(i)The plaintiff filed the suit in O.S.No.297 of 2009 on the file of the Principal District Munsif, Kuzhithurai seeking to declare the claim of the defendant alleging the marital relationship with the plaintiff as null and void and consequentially to restrain the defendant by means of a permanent injunction from causing disturbance to his peaceful wedded life with his wife S.Rajeswary.

(ii)According to the plaintiff, he was a painter and engaged in doing painting as coolie. He got married to one Rajeswary on 12.05.1985 at Thiruvananthapuram and the marriage was solemnized as



per the Hindu religious customs and the same was registered with the Sree Narayana Dharma Paripalana. Out of this wed-lock, the plaintiff has a daughter, who has now completed her Post Graduate. The plaintiff would state that the defendant, who was a complete stranger to him, was claiming that she is his wife and therefore, he has come forward to file the suit for the declaration. According to the plaintiff, the defendant was a stranger and he had not married her on 15.10.1991.

4.On receipt of summons in the suit, the defendant had entered appearance and filed her written statement *inter alia* contending that the suit was filed with ulterior motives. The plaintiff and defendant got married on 15.10.1991 at Manjalumoodu in the presence of their relatives and friends and out of wed-lock, they got one son, namely Sreejin, who was born on 18.12.1992. The plaintiff was living with the defendant till July 1997. Thereafter, he started living with another woman, namely Sobana.

5.The defendant, therefore, filed a maintenance case in M.C.No.4 of 2001 before the learned Judicial Magistrate Court No.I, Kuzhithurai claiming maintenance from the plaintiff. The learned Judicial Magistrate was pleased to order maintenance at the rate of Rs.500/- each for the defendant and their son. The defendant had produced all the documents to show that she was the legally wedded wife of the plaintiff and that the son was born out of the wed-lock. Thereafter, on 17.12.2007, the defendant had filed an application for enhancement of the maintenance, already granted by filing C.M.P.No.12738 of 2007 and the said petition has also been ordered and the plaintiff is directed to pay a sum of Rs.1,000/- to the defendant and a sum of Rs.1,500/- to their son. The learned counsel appearing for the defendant, on instructions, would submit that the said maintenance is being paid till date by the plaintiff.

6.The learned Principal District Munsif, Kuzhithurai had framed the following issues:

1.Whether the plaintiff is entitled to declaration as prayed for?

2.Whether the plaintiff is entitled to permanent injunction as prayed for?

7.The plaintiff examined himself as P.W.1 and marked Ex.A1 to Ex.A8. The defendant examined herself as D.W.1 and marked Ex.B1 to Ex.B13. The learned Munsif returned a finding that the plaintiff has come forward with a false case that the defendant was stranger and totally un-known to him. However, on perusal of the documents filed by the defendant, particularly Court documents, it is evident that the plaintiff had recognized the relationship that he had with the defendant and also he had taken out a petition for custody of the son in H.M.O.P.No.854 of 1998, which was marked as Ex.B11 & Ex.B12. Further, he has also been paying monthly maintenance to the



Therefore, the plaintiff was not entitled to the relief claimed by him.

8.The said judgment and decree was taken out an appeal to the Subordinate Judge, Kuzhithurai in A.S.No.74 of 2011. The learned Subordinate Judge also confirmed the finding of the judgment and decree of the learned Principal District Munsif, Kuzhithurai. This concurrent judgment and decree is challenged by the plaintiff/appellant before this Court.

9.Ms.Krishnaveni, learned senior counsel appearing on behalf of the learned counsel for the appellant would contend that the plaintiff has proved his earlier marriage by producing Ex.A1, Ex.A3, Ex.A4, Ex.A5, which are of the year of 1985. According to the defendant, marriage between her and the plaintiff had taken place in the year 1991, while the marriage with one Rajeswary was still in subsistence. Therefore, the defendant cannot claim as legally wedded wife of the plaintiff. She would further argue that the plaintiff has not recognized the defendant as his wife. Therefore, the Courts below erred in dismissing the suit filed by the plaintiff herein.

10.Per contra, Mr.B.Christopher, appearing on behalf of the defendant would contend that the plaintiff has come forward with absolutely a false case, since the entire cause of action for filing the suit was that he and the defendant were totally strangers. However, a reading of the petition that has been filed in H.M.O.P.No.854 of 1998 on the file of the Family Court, Thiruvananthapuram coupled with the order in C.M.P.No.12738 of 2007 and Ex.B1 to B7, would clearly show that the plaintiff and the defendant had been living together as husband and wife from 15.10.1991 till 17.09.1997 and thereafter, they had separated. But, however, there was no legal separation between the parties. The plaintiff has also been paying monthly maintenance till date. Further, in the proceedings before the Family Court in H.M.O.P.No.854 of 1998, the plaintiff has recognized that the minor son has been born to him and defendant. Therefore, the question of the defendant being a stranger is absolutely false and further the suit is barred by the limitation, since it has been filed nearly 18 years after marriage between the plaintiff and the defendant.

11.Heard the learned counsel on either side and perused the materials.

12.The plaintiff has filed the suit to declare the marital relationship between him and the defendant as null and void and for an injunction restraining the defendant from interfering with his wedded life with one Rajeshwari. As stated by the trial Court, the suit is not one for declaring that the plaintiff is not the husband of the defendant or that the defendant is not his wife.



13. On very perusal of the sequence of events, it appears that this suit came to be filed, after the plaintiff had suffered a dismissal order before the Family Court, Thiruvananthapuram in the Guardian O.P and also in the maintenance case.

14. The defendant has produced evidence to show that they have been living as man and wife from the date of marriage till they separated. Further, the suit has been filed nearly 18 years after marriage and this Court also take a view that the suit is liable to be dismissed.

15. The plaintiff has recognized the defendant as his wife and has been paying maintenance till date. Hence, I do not find any infirmity in the judgment and decree of the Courts below. There is no question of law muchless substantial question of law warranting interference of this Court. Accordingly, this Second Appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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To

1. The Subordinate Judge, Kuzhithurai.

2. The Principal District Munsif, Kuzhithurai.

Copy to:

The Section Officer, VR Section, (2 Copies)
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.B.CHRISTOPHER, Advocate (SR-94357[F] dated 24/10/2019)

S.A. (MD) No.245 of 2015
24.10.2019

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