

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE: 26.02.2020

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

S.A. No.1169 of 2007 &
M.P.No.1 of 2012

1. Karthi
S/o.Elumalai
2. Kupammal
Kuppamal
W/o.Elumalai

... Appellants/ Respondents/Defendants

Vs.

1. Radha
2. Minor Sanjay Kumar ... Respondents/ Appellants/Plaintiffs
rep.by next friend mother Radha

Second Appeal filed under Section 100 of the Code of Civil Procedure as against the judgment and decree dated 10.07.2007 made in A.S.No.92 of 2006 on the file of the Principal Subordinate Judge, Tiruvannamalai, Tiruvannamalai District reversing the decree and judgment dated 31.3.2005 passed in O.S.No.46 of 2004 on the file of Additional District Munsif, Chengam.

For Appellants : Mr.G.Rajan

For Respondents : Mrs.K.Sandhya for
M/s.Sarvabhauman
Associates

JUDGMENT

This Second Appeal has been directed against the judgment and decree dated 10.07.2007 made in A.S.No.92 of 2006 on the file of the Principal Subordinate Judge, Tiruvannamalai, Tiruvannamalai District reversing the decree and judgment dated 31.3.2005 passed in O.S.No.46 of 2004 on the file of Additional District Munsif, Chengam.

2. The appellants are the defendants and the respondents are the plaintiffs. The parties are described as per their litigative status in the suit proceedings.

2.1 The first plaintiff is the wife of the first defendant. Second plaintiff is the minor son born to the first plaintiff and the first defendant. The second defendant is the mother of the first defendant. The estranged wife of the first defendant, the first plaintiff herein has approached the trial court, seeking for maintenance of sum of Rs.500 per

month and also partition of properties belonging to the defendants and allot a share to the second plaintiff as per entitlement in the family properties.

2.2 The suit was resisted by the defendants, stating that the properties mentioned in the plaint schedule belonging to the defendants independently and they are not joint family properties to be shared. As regards the maintenance claim, it was resisted stating that the first plaintiff left matrimonial home on her own volition and therefore, she was not entitled to maintenance as she is engaged in flower business and earning income and her character was also questionable.

3. The trial Court which went into the issues, has agreed with the case of the defendants and dismissed the suit. According to the trial Court, the suit schedule properties belonging to the defendants alone and the plaintiffs are not entitled at all. The trial Court found that the property was self-acquired and hence the plaintiff cannot lay any claim over the same. Curiously no maintenance was claimed for the minor son in the suit proceedings. The trial Court has held in regard to the claim for maintenance, that the first plaintiff has sufficient means. As against that, the plaintiffs filed an appeal in A.S.No.92 of 2006 before the learned Principal Subordinate Judge, Tiruvannamalai.

4. The lower appellate Court which dealt with the appeal, has concurred with the findings of the trial Court in refusing the relief of granting any share to the second plaintiff in properties and also in refusing to grant any maintenance. In fact, the lower appellate Court also found that the character of the first plaintiff was questionable and the property in which she laid a claim, was absolutely belonging to the defendants. However, while concurring the findings of the trial Court in toto, the appellate Court found that the minor son was entitled to some maintenance though it was not pleaded. In order to render justice, the lower appellate Court partially allowed the appeal by granting Rs.500/- per month towards maintenance of minor son payable by the first defendant. To that extent, the judgment and decree of the trial Court was modified. As against that, the defendants are before this Court.

5. Shri G.Rajan, learned counsel appearing for the appellants/defendants would submit that the lower appellate Court was not right in granting maintenance to the minor son when the same was not pleaded by the first plaintiff. In this regard, he would rely on two decisions reported in "(2008) 4 SCC 256 (Schotts Engineering, Bangalore versus Rajesh P.Surana and others)" and "(1963) 3 SCR 623: AIR 1963 SC 309 (Sheikh Abdul Kayum and another versus Mulla Alibhai and others)".

According to the learned counsel, the above decisions would give support to the legal contentions raised by him.

6. Per contra, Smt.K.Sandhya, learned counsel appearing for the respondents/plaintiffs would submit that it was always open to the Court to mould and grant the relief under the provisions of the CPC. She would rely on a recent decision of a learned Judge of this Court made in A.S.No.569 of 2016, dated 07.01.2020. She would submit that the decision of the lower appellate Court to grant maintenance to the minor son is in furtherance to render justice to the parties and therefore, the same need not be interfered with on mere application of strict procedural rules.

7. I have considered the submissions of the learned counsel for the appellants/defendants and the learned counsel for the respondents/plaintiffs.

8. During the course of arguments, this Court was informed that the minor son became major pending litigation and the amount of Rs.500/- granted by the lower appellate Court towards maintenance for minor son has accumulated to the tune of Rs.1,25,000/-. Although two decisions have been relied upon by the learned counsel for the appellants/defendants, this Court does not wish to address the ruling as laid down by the Hon'ble Supreme Court for the simple reason that in order to render justice between the parties, this Court is of the considered view that the first defendant being father, has an obligation to maintain his son. He also questioned his relationship vis-a-vis his wife, first plaintiff.

9. In consideration of overall circumstances of the case, the amount payable to the son is quantified to Rs.1,00,000/- since the son has become major as informed to this Court. Therefore, without touching upon the issues and questions of law involved, this Second Appeal is disposed of with the following direction.

The first appellant is directed to pay Rs.1,00,000/- (Rupees One lakh) towards maintenance for his son as one time payment and such payment has to be made within a period of 12 weeks from the date of receipt of a copy of this judgment. The lower appellate Court while ordering the maintenance, has created a charge over the property belonging to the 1st appellant. It is made clear that on payment of Rs.1,00,000/-being made by the 1st appellant as directed by this Court, the charge created on the property shall stand vacated. No costs.

Suk

Sd/-
Assistant Registrar(CS)

//True Copy//

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Sub Assistant Registrar

To

1.The Principal Subordinate Judge,
Tiruvannamalai, Tiruvannamalai District.

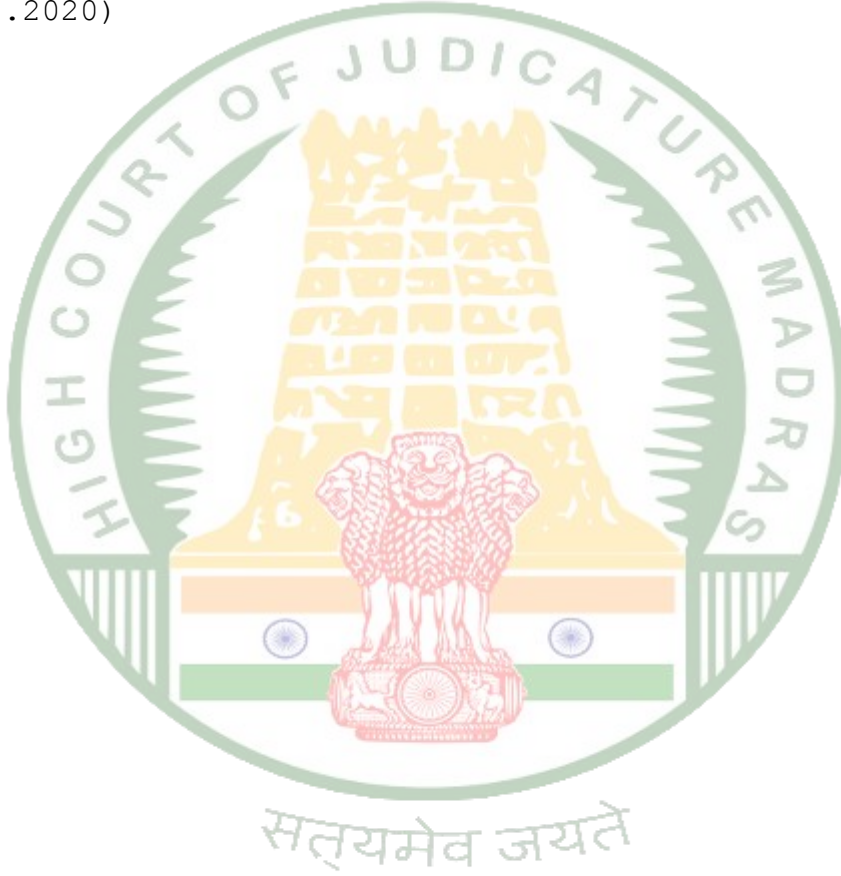
2.The Additional District Munsif, Chengam.

Copy to:

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

S.A. No.1169 of 2007
M.P.No.1 of 2012

A.SK(28.12.2020)



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