



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **02.01.2020**

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

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A.S. (MD)No.209 of 2019

and

C.M.P. (MD)No.10510 of 2019

Solomon Banerji

: Appellant/Defendant

Vs.

1.Kamalam

2.Minor Berlin Jairo

3.Minor Debrin Jairo

[Minor 2nd and 3rd respondents
rep. by the natural guardian
1st respondent mother]

: Respondents/Plaintiffs

PRAYER: Appeal is filed under Section 96 of the Code of Civil Procedure praying to allow this appeal by setting aside the judgment and decree passed in O.S.No.25 of 2019, dated 11.04.2019 on the file of the learned Additional District Judge (Fast Track Court), Kanyakumari at Nagercoil and dismiss the suit with cost.

For Appellant : Mr.B.Brijesh Kishore

For Respondents : Mr.K.P.Narayanakumar

J U D G M E N T

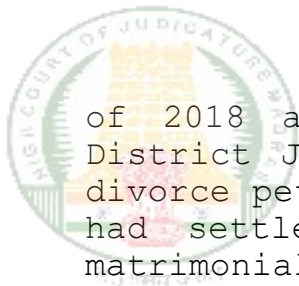
This appeal is filed originally challenging the order of the Trial Court granting Rs.8,000/- [Rupees Eight Thousand only] towards maintenance to the wife and minor children.

2. When the appeal came up for hearing before this Court on 17.12.2019, after hearing the arguments of the appellant's counsel, this Court was about to dismiss the appeal. At that stage, at the request of the counsel, the matter has been adjourned today for appearance of parties.

3. Today, when the matter was taken up for consideration, the appellant/husband and the first respondent/wife and two minor children are present. On interaction, both the husband and wife stated before this Court that they are living together now. The wife has also stated that for the last one month, they joined together and they are leading a matrimonial life happily.

4. It is also brought to the notice of this Court that the husband has already filed an application for divorce in DOP.No.119

<https://hcservices.ecourts.gov.in/hcservices/>



of 2018 and the same is pending before the learned Additional District Judge (Fast Track Court), Kanyakumari at Nagercoil. The divorce petition is pending from the year 2018. However, the parties had settled the matter amicably and now, they are leading a matrimonial life happily.

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5. In such view of the matter, this Court is of the view that the divorce application pending before Kanyakumari Court may be closed. Hence, the learned Additional District Judge [Fast Track Court], Kanyakumari at Nagercoil is required to close the divorce petition as infructuous, since the matter has been amicably settled between the parties.

6. As far as this appeal is concerned, the Trial Court has taken note of the factual scenario and awarded maintenance. Since both parties are now residing together, the question of executing the order does not arise. However, in the event, the husband, in future, neglects to maintain the wife and children, the Trial Court judgment, namely O.S.No.25 of 2019, can be put in execution and enforceable by the wife.

7. The appellant has also agreed before this Court that he will execute the settlement deed in favour of the minor son in respect of the property settled in his favour by his father retaining life interest in his favour and also in his wife and also provide equivalent cash to his minor daughter. Till such settlement is executed by the father, attachment shall continue. Once settlement is executed in favour of the minor son, attachment passed by the Trial Court shall be raised.

8. It is also made clear that when such settlement is executed and presented for registration, the Registering Officer is directed to register the document, irrespective of the attachment already passed by the Court below. On completion of registration, attachment shall be raised.

9. The appeal is disposed of with the above observation. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

SML



To

1.The Additional District Judge
(Fast Track Court), Kanyakumari at
Nagercoil.

2.The Record Keeper,
V.R.Section, (2 copies)
Madurai Bench of Madras High Court,
Madurai.

Copy to:

The District Registrar
Kanniyakumari District at Nagercoil

+1 CC to Mr.B.BRIJESH KISHORE, Advocate (SR-53[F] dated
02/01/2020)

+1 CC to Mr.K.P.NARAYANAKUMAR, Advocate (SR-68[F] dated
03/01/2020)

Judgment made in
A.S. (MD) No.209 of 2019
Dated: **02.01.2020**

MK (27.01.2020) 3P 7C