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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.09.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.No.338 of 2011
and M.P.No.1 of 2011

T.V.Rajamanickam

...Appellant/Defendant

Vs.

Akilandeswari

...Respondent/Plaintiff

Prayer: Appeal Suit filed under Section 96 of the Code of Civil Procedure against the Judgment and Decree of the Family Court, Salem, dated 29.03.2011 in O.S.No.23 of 2005.

For Appellant : Mr.D.Sivakumaran

For Respondent : No appearance

JUDGMENT

The defendant, in a suit for maintenance, has challenged the judgment and decree passed by the Family Court, Salem in O.S.No.23 of 2005. The parties in this appeal are referred to in the same rank as before the Family Court.

2.Case of the plaintiff:-

The plaintiff had filed a suit in O.S.No.23 of 2005 claiming maintenance of a sum of Rs.10,000/- per month, till her life time and to create a charge over the property described in the suit schedule. The plaintiff had listed three items of properties. It is her case, that she and the defendant had got married on 25.12.1985 and after marriage had been living as husband and wife in the matrimonial home till 1993. In order to provide security to her, her father had purchased a house in Salem on 01.12.1986 and from the year 1994, the plaintiff and the defendant were residing at this place.

3.Out of the wedlock, the plaintiff had given birth to a daughter Nagalakshmi on 10.04.2000 and a son Naganathan on 15.07.2002. It is the case of the plaintiff that the demeanor of the defendant had changed, after the birth of his daughter and he started having illicit intimacy with other women. The



plaintiff was subject to physical abuse, if she questioned his activities. The defendant's behavior has deteriorated and it was impossible for the plaintiff to continue living with him.

4. The defendant was carrying on business in old motors and the plaintiff's father had invested money into a vessel business, which was started in the name of the plaintiff. The properties were acquired at several places, from out of the income of this business. The plaintiff had started losing interest in matrimonial life as he started seeing money and he was compelling the plaintiff to sign in a few blank papers and stamp papers and also compelling her to grant him a divorce.

5. During the year 1999-2000, the activities of the defendant had turned so bad that he had brought a concubine into the matrimonial house by name Vijayalakshmi. He proclaimed her to be his second wife and started living with her. The defendant took possession of all the properties, not only the one standing in his name but also standing in the name of the plaintiff and he threatened the plaintiff that if she does not consent for a divorce, he would sell away all the properties. After the year 1999-2000, the defendant had also stopped paying any maintenance to the plaintiff as well as her minor daughter (the son was yet to be born). The plaintiff therefore took shelter in her parental home.

6. Thereafter, the defendant had filed a petition for divorce in F.C.O.P.No.104 of 2000 on the file of the Family Court, Salem. While the said petition was pending, well wishers of the defendant and the plaintiff tried to negotiate a settlement and thereafter, the defendant agreed to take back the plaintiff and had expressed regret for his action. The plaintiff believed the words of the defendant and resumed co-habitation with the defendant. Thereafter, the minor son Naganathan was born to the two. The defendant ultimately had not pressed the divorce petition only on 13.05.2003. Simultaneously, the defendant had also filed a suit for bare injunction against the plaintiff in O.S.No.268 of 2003 and the suit was dismissed for default on 22.08.2003.

7. Ultimately, they parted way with the defendant deserting the plaintiff and living separately in the house which belonged to the plaintiff. The defendant continued residence in the suit 1st item of the property, standing in the name of the defendant. However, she did not receive any maintenance from the defendant and she had to not only maintain herself but also her minor children. It was her case that the defendant had property worth over a sum of Rs.22 lakhs as self acquired properties apart from the joint family properties which are worth over a sum of Rs.25 lakhs and he was earning a monthly income of Rs.30,000/-.



8. Written Statement of the defendant:

9.However, contrary to her assurance, the plaintiff had left him without any valid reason and that too on account of no fault on the part of the defendant. The defendant would also submit that the plaintiff is receiving rent from the building belonging to the defendant and she had also started giving him a lot of trouble by giving false complaint to the police that the defendant was attempting to grab off the properties. On the contrary, it was the plaintiff who was attempting to take control of all the properties of the defendant. Despite several requests, it was the plaintiff who was keeping away from her matrimonial home and the defendant was always ready and willing to live with the plaintiff and maintain the children. However, the plaintiff was hellbent on not rejoining the defendant. The defendant would submit that the plaintiff is only interested in his properties. The defendant was forced to execute a settlement deed in favour of his son regarding a portion of his property and at that time, the plaintiff had assured that she would not claim any rights in the property or for maintenance. Once again, by filing the above suit, she had gone back on her word. He would deny the fact that he was possessed a property worth self acquired and ancestral, to the tune of over a sum of Rs.47 lakhs and also denied that, he was earning a monthly income of Rs.30,000/-.

The learned Family Judge, Salem, had on considering the pleadings and written statement, framed the following issues:

(b) To what relief the plaintiff is entitled for?

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- (1) Whether the plaintiff is entitled for maintenance?
(2) Whether the suit schedule items 1 to 4 are liable to be created charge?
(3) To what other relief the plaintiff is entitled to?

12. The plaintiff has examined herself as PW1 and marked Exs.A1 to A4 in support of her case. The defendant has examined himself as DW1 and marked Exs.D1 and D2.

13. On consideration of the evidence, both oral and documentary, the learned Family Judge had partly decreed the suit by directing the defendant to pay a sum of Rs.3,000/- per month as maintenance to the plaintiff from the date of filing of the suit, till her vacating item 1 of the suit schedule property. In the event of her vacating and handing over possession of item 1 of the suit schedule property to the defendant, the plaintiff was entitled to enhance the maintenance of Rs.7,500/- per month and from that day, there would be a charge in respect of the above sum over the 1st item of the suit schedule property. In all other aspects, the prayer of the plaintiff was turned down. Challenging this judgment and decree, the defendant is before this Court.

14. The points for consideration in the above appeal:

(a) Whether the plaintiff is entitled to a monthly maintenance, when she is already in possession of the property of the defendant and receiving rent from the said property?

(b) Whether the amount of maintenance granted is on the higher side?

© Whether the judgment and decree of the Trial Court is correct?

15. The respondent, who has been served with the summons in the first appeal has not entered appearance either in person or through counsel. Therefore, the arguments of the learned counsel for the appellant/defendant alone was heard by this Court.

16. Mr.D.Sivakumaran, learned counsel appearing on behalf of the defendant would contend that the plaintiff has come forward with the case that she had been deserted and neglected by the defendant and therefore, she was entitled to a maintenance. She had also claimed a sum of Rs.10,000/- on the premise that the defendant had extensive properties, standing to his individual name and his joint name along with the other members of his family, apart from earning a monthly income of Rs.30,000/-. He would point out the defence wherein the defendant had clearly stated that the plaintiff is in the occupation of the property which belongs to the defendant and that apart, she has leased



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out the first floor of the said building to third parties and earning a rental income therefrom. That apart, the defendant has also executed a settlement deed in favour of his son in respect of a portion of his property. He would therefore submit that the plaintiff is adequately provided for and she does not require a monthly maintenance. He would also state that the defendant had purchased the property, out of his income and neither the plaintiff nor her parents are contributed towards its purchase. He would also point out that the plaintiff has not established her contention that her father had provided funds for the purchase of immovable property and also by investing in the business. The defendant had at no point of time denied his duty to maintain the wife namely the plaintiff. However, it was the plaintiff who was not willing to continue in her matrimonial home with the defendant/husband. Therefore, the plaintiff who out of her own volition had left her matrimonial home is not entitled to be maintained. He would further argue that without proving the income of the defendant, the Court below has erred in granting maintenance to the plaintiff and failing to draw adverse inference from the fact that the plaintiff had failed to produce documents to show how much of rent she was receiving from the properties let out by her. He would therefore pray that the decree and judgment to be set aside.

17. Admittedly, the plaintiff and the defendant are husband and wife and both of them are living apart long from the year 2003. That the relationship between the two was strained, is evident from the fact that the defendant had filed a petition for divorce in F.C.O.P.No.104 of 2000, which ultimately was withdrawn, after well wishers have intervened to bring about a rapprochement between the parties.

18. It is needless to state that the husband is duty bound to maintain his wife and admittedly, the defendant has not been discharging his duty. The only excuse that has been put forward by the husband is that the wife is earning income by leasing out his property to third parties. The evidence would reveal that the plaintiff is residing in one portion and it is only the first floor of the premises that has been let out to tenants. When the defendant has failed in his duty to maintain his wife and children, the plaintiff, who had the custody and care of the minor children, was left with no other alternative except to lease out a portion of the property so as to earn some income. Even this appears to be a paltry sum of Rs.3,000/-. No doubt, the plaintiff has not produced documents to prove the income that she was earning by leasing out the property. The defendant had also not taken any steps to summon tenants so as to ascertain the actual rent that was received by the plaintiff. The Trial Court has balanced the interest of both the parties and taking note of their status, had partly decreed the suit.



The Trial Court had also rejected the claim of the plaintiff to create a charge in respect of all the properties of the defendant and has restricted the charge only to the 1st item of the property, in which admittedly, the plaintiff is now residing. The appellant/defendant has not made out any case for this Court to interfere with the findings of the learned Family Judge, Salem. Consequently, the First Appeal is dismissed and the decree and judgment in O.S.23 of 2005 of the Family Court, Salem is confirmed. However, considering the circumstances, there shall be no order to cost. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(CJ conf)

//True Copy//

Sub Assistant Registrar

vkr/gd

To

The Judge, Family Court, Salem.

Copy to:

The Section Officer,
V.R.Section, High Court,
Madras.

A.S.No.338 of 2011 and
M.P.No.1 of 2011

SSI (CO)
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