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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 15.09.2021

Judgment Pronounced On : 22.11.2021

CORAM

THE HON'BLE MRS.JUSTICE S.KANNAMMAL

Second Appeal No.228 of 2019
and
C.M.P.No.3600 of 2019

Saravanan

... Appellant/Defendant

-Versus-

1. Tamilarasi

2. Minor Meena

Minor represented by her Guardian
and Next Friend mother Tamilarasi

... Respondents/Plaintiff

This second appeal is filed against the judgment and decree dated 11.08.2018 passed in A.S.No.16 of 2017 by the learned Principal District and Sessions Judge, Ariyalur, confirming the decree and judgment dated 22.09.2017 passed by the learned Subordinate Judge, Jeyankondam, in O.S.No.175 of 2017.

For Appellant : Mr.S.T.P.Kuilmozhi

For Respondents : Mr.P.Rathinavelu

JUDGMENT

This Second Appeal has been filed by the sole defendant, who had suffered a decree for payment of maintenance, pass and future to the respondents - his wife and minor daughter which came to be confirmed by judgment and decree dated 11.08.2018 made in A.S.No.16 of 2017 by the learned Principal District Judge, Ariyalur.



2. The facts leading to the filing of this second appeal in brief are as follows:- The respondents herein are the plaintiffs and the appellant herein is the defendant in the suit. For the sake of convenience the parties in this second appeal will be referred to as per their array before the trial court. The suit was filed for a decree for payment of maintenance, past and future at Rs.8,000/- p.m.

3. The suit was filed on the pleadings, inter alia, that the 1st plaintiff got married the defendant on 15.03.2009. After the marriage, they lived as husband and wife for four months in a rented premises at Perambalur. Thereafter, they shifted their residence to Ariyalur. The 1st plaintiff was working as an Assistant Professor at M.R.C. College, Thathanur, while the defendant was working at Rover College, Perambalur. They were blessed with a female baby named as Leena. The defendant was greedy for dowry and he used to necessarily harass the 1st plaintiff and beat her. The defendant is also a drunkard. He was planning to get second marriage and therefore, he filed a petition H.M.O.P.No.47 of 2013 on the file of the Subordinate Judge, Ariyalur, and got a divorce. Though there was an order for interim maintenance in that proceedings, the defendant did not pay any maintenance. Cost was also not paid by the defendant. The defendant is working as Village Administrative Officer and earning a sum of Rs.15,000/- The defendant is an affluent person and he is getting more than a sum of Rs.5,00,000/- as rental income from his land and house properties. Hence, the suit.

4. The defendant resisted the suit inter alia contending that the averments made in the plaint are false and baseless. The defendant admitted the fact that he got married the 1st plaintiff and they were blessed with a female child. The 1st plaintiff was earning a sum of Rs.7,000/- p.m. by working as part time professor. The father of the 1st plaintiff has a house property. The 1st plaintiff is also getting a sum of Rs.20,000/- per month by taking private tuition. Therefore, the 1st plaintiff is not entitled for any maintenance. However, if the 1st plaintiff feels that she is unable to maintain the child, he is ready to pay maintenance for the child.

5. Based on the above pleadings of either parties, the court below had framed the following issues for trial:-

(1) Whether the plaintiffs are entitled for maintenance at Rs.8,000/- per month from the defendant?

(2) Whether the plaintiffs are entitled to create charge over the suit schedule properties?



(3) To what other reliefs the plaintiffs entitled for?

During trial, on the side of the plaintiffs, the 1st plaintiff examined herself as P.W.1 and proved 2 documents as Ex.A1 and A2 and on the side of the defendant, the defendant examined himself as D.W.1 and proved only one document as Ex.B.1.

6. The learned Subordinate Judge after having considered the oral and documentary evidence adduced by either parties had concluded that the plaintiffs are entitled for past and future maintenance and decreed the suit as prayed for. Aggrieved by the same, the defendant preferred an appeal which was dismissed by the learned Principal District Judge, Ariyalur. Challenging the dismissal of the appeal, the defendant is before this court with the present second appeal.

7. The second appeal has been admitted on the following substantial question of law:-

(1) Whether the courts below have failed to consider the fact that the 1st plaintiff is the deserting spouse and as such she is not entitled for maintenance?

(2) Whether the 1st respondent is capable of looking after herself and her minor child, the 2nd respondent?

(3) Whether the courts below were right in directing the appellant to pay a sum of Rs.3,000/- per month to the 1st respondent and a sum of Rs.4,500/- per month to the 2nd respondent as permanent maintenance?

Substantial Question Nos.1 to 3:-

8. The learned counsel for the defendant submitted that the 1st plaintiff spouse had withdrawn from the society of the defendant without reasonable cause and more over she is capable of looking after herself and the minor female child as she is getting not less than a sum of Rs.25,000/- per month as salary by working as a Teacher. The courts below have not appreciated the facts of the case and the evidence on record and therefore, the judgment and decree of both the courts below are liable to be set aside.

9. Per contra, the learned counsel for the respondents submitted that the trial court after having considered the status of the parties and the capacity of the defendant to pay the maintenance, the trial court had rightly directed the defendant to pay a reasonable sum as maintenance for the



plaintiffs which was confirmed by the first appellate court. No illegality or infirmity could be found in the same and the second appeal is liable only to be dismissed.

10. It is not in dispute that the defendant got married the 1st plaintiff as per Hindu rites and customs on 15.03.2009 and after the marriage they lived together as husband and wife for some time and they were blessed with a female child subsequently named as Leena, who is still minor. The marriage unfortunately was not a success and there were misunderstandings between the couple even from the very beginning. Admittedly the marriage between the defendant and the 1st plaintiff was dissolved by a decree of divorce at the instance of the defendant. On a suit filed by the wife along with her daughter, the trial court directed the husband to pay a sum of Rs.3,000/- per month to the 1st respondent (wife) and a sum of Rs.4,500/- p.m. to the 2nd respondent (daughter) as permanent maintenance from the date of plaint.

11. It is the defendant who filed the petition for divorce. The 1st plaintiff though filed a petition for restitution of conjugal right prior to the divorce petition, in her cross examination as D.W.1 in a divorce proceedings, while denying the allegations made in the petition for divorce by the defendant, she has stated that she had no objection for granting divorce as there was no possibility for reunion. There is not even a single finding recorded by the court which had granted divorce in favour of the defendant that the 1st plaintiff had withdrawn herself from the society of the defendant without any reasonable cause. On a careful reading of the entire judgment granting divorce, this court is unable to find any findings against the 1st plaintiff and this court understood that the decree was based merely on the single line of the 1st plaintiff expressed during her cross examination that she had no objection for granting divorce as there was no possibility for reunion. Thus, there is no sufficient evidence to conclude that the 1st petitioner is the deserting spouse.

12. In *Rajnish v. Neha*, (2021) 2 SCC 324, the Honourable Supreme Court has held that there is a distinction between maintenance under HMA and HAMA is that the right under Section 18 of the HAMA is available during the subsistence of a marriage, without any matrimonial proceeding pending between the parties and once there is a divorce, the wife has to seek relief under Section 25 of the HMA. However, as the defendant did not question the jurisdiction of the courts below, this court does not want to go into the the same.

13. Section 25 of the Hindu Marriage Act 1955 does not confer any such absolute legal right. It vests a discretion in



the court to award alimony or maintenance to a party in a matrimonial cause who is indigent against the other party comparatively well off. Further, it is needless to state that desertion by itself would not disentitle the wife from making a claim for alimony and permanent maintenance under Section 25 of the Hindu Marriage Act. As already stated, neither there is any finding given by the trial court as to who is the deserted party nor sufficient evidence brought on record by the defendant.

14. Even though the defendant claimed that the 1st plaintiff is capable of looking after herself and her child, there was no evidence adduced by the defendant before the trial court to prove that the 1st plaintiff was in employment and getting a regular income. Before the first appellate court also no evidence was produced by the defendant to prove that the 1st plaintiff is capable of looking after herself and her child. The defendant is admittedly a Government Servant working as Village Administrative Officer in the Revenue Department of Tamil Nadu and has been getting a decent salary. Considering the economic condition which was prevalent at the time of awarding permanent maintenance and the other factual situation of the case, this court is of the firm opinion that the maintenance awarded for the plaintiffs is just and reasonable and the same does not require any interference at the hands of this court. Thus, this court do not find any illegality or infirmity in the judgment and decree of the courts below. The substantial questions 1 to 3 are answered accordingly as against the appellant/defendant.

15. For the foregoing discussions, the second appeal fails and the same deserves only to be dismissed. It is, however, made clear that if the trial court is satisfied that there is a change in the circumstances of either party at any time, it may at the instance of either party by way of appropriate proceedings, vary, modify or rescind any such order of permanent maintenance in such manner as it may deem just as provided for under Section 25(2) of The Hindu Marriage Act.

In the result, the Second Appeal is dismissed and the judgment and decree passed by the courts below are confirmed. Considering the facts and circumstances of the cases, both parties are directed to bear their respective costs in this court. Consequently, connected CMP stands closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kmk



To

1. The Subordinate Judge,
Jeyankondam,
Ariyalur District.
2. The Principal District and Sessions Judge,
Ariyalur,
Ariyalur District.

Copy to:

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

+2ccs to Mr.Rathinavelu, Advocate, S.R.No.47082

+1cc to M/s.Kuilmozhi, Advocate, S.R.No.60373

Second Appeal No.228 of 2019

MG(CO)
SU(10/12/2021)