



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.01.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

A.S.No.890 of 2020
and
C.M.P.No.10832 of 2020

T.Karthikeyan
represented by his Power of Attorney Agent
S.K.Meenakshi Sundaram ...Appellant/2nd Defendant
(Cause title accepted vide
CMP.No.9642 & 9647 of 2020 in
AS.SR.No.50931 of 2020

-vs-

1.Nagarathinam
2.Santhi ...Respondents 1&2 /Plaintiffs
3.Raghunathan ...3rd Respondent/1st Defendant

Prayer: Appeal Suit filed under Section 96 of C.P.C. r/w.
Section 19 of the Family Court Act to set aside the judgment and
decree dated 01.06.2020 passed in O.S. No.15 of 2015 on the file
of the Family Court, Salem.

For Appellant : Mrs.Hema Sampath,
Senior Counsel for
Ms.R.Meenal

For Respondents: Ms.Zeenath Begum

JUDGMENT

This appeal has been directed against the judgment and
decree dated 01.06.2020 passed by the Family Court, Salem in
O.S. No.15 of 2015 directing the defendants/third respondent
and the appellant herein to pay jointly Rs.8,000/- per month to
each of the plaintiffs/respondents 1 and 2 herein from the date
of filing of Pauper Original Petition namely, on 12.01.2011 till
their life time.



2. Mrs. Hema Sampath learned senior counsel appearing for the appellant submitted that respondents 1 and 2 are mother and younger sister of the third respondent and the appellant. Assailing the impugned direction given in the judgment, learned senior counsel argued that when the appellant is prepared to pay the maintenance to his mother, there is no liability on his part to pay the maintenance to his sister. When the second respondent second plaintiff is not an illiterate and also earning handsome amount by doing tailoring job, this vital aspects have been completely overlooked by the Family Court. Moreover, though the appellant herein in his written statement has stated that the second respondent herein is a normal lady and also competent and capable enough to eke out her livelihood, the Family Court, without any acceptable evidence, has come to the conclusion that since the second plaintiff second respondent, who appears to be a lady of less intelligence quotient, is not able to speak clearly or fluently, she is not in a position to maintain herself. Arguing further, learned senior counsel submitted that when the pay certificates have not even produced, it is unreasonable and un-justified on the part of the Family Court to reach the said conclusion that the appellant/second defendant has got means to maintain the plaintiffs. Although the appellant/second defendant has specifically stated that he is ready to pay Rs.4,000/- per month to the first plaintiff during the cross examination of D.W.1, without any basis or reasoning, the Family Court has directed the appellant to pay maintenance to the second respondent/second plaintiff on the sole ground that she is unmarried sister, which is not only legally and factually incorrect but also against any justification. As the liability to maintain the second respondent/second plaintiff has been wrongly fastened on the appellant, the impugned judgment is liable to be interfered with.

3. Heard both sides.

4. Since the plaintiffs are mother and sister of the appellant, when there was objection raised by the appellant before the Family Court that the second plaintiff sister is a earning member by doing tailoring job, no document whatsoever was produced to show as to what was the actual amount of income derived from the tailoring and equally, no such document whatsoever was produced to show that the first plaintiff has been receiving any family pension. Therefore, the conclusion given by the Family Court that when the appellant has come forward to pay a sum of Rs.4,000/- per month to his mother, he is liable to pay equal sum of monthly maintenance to his own sister, who is a lady of less intelligence quotient and not able to speak clearly or fluently, cannot be found fault with. Ex.B2 clearly shows that the appellant/second defendant has sent some amounts to the first plaintiff till December 2008 and



thereafter, he has not sent any amount to the first plaintiff for the flimsy reason that there was a cancellation of Settlement Deeds by the first plaintiff. When the defendants are found employed in Foreign countries for years together, the Family Court has rightly come to the conclusion that they are all earning members in lakhs per month and they have got sufficient means to maintain the plaintiffs, who are unable to maintain themselves. Therefore, we are of the considered view that when the appellant has means to pay monthly maintenance to his mother, he is legally liable and morally bound to pay the monthly maintenance to his own sister and mother. Moreover, when the plaintiffs have moved the Suit seeking monthly maintenance of Rs.10,000/- each from the defendants, the Family Court, considering the fact that the defendants are earning in lakhs per month and they have got sufficient means to maintain their mother and sister, has directed the defendants to pay jointly Rs.8,000/- per month to each of the plaintiffs, which in our considered opinion, cannot be found fault with. Therefore, finding that the appellant, being a son of the first respondent and brother of the second respondent, is morally obliged to take care of them and also legally bound to meet out the monthly maintenance, this Court is inclined to dismiss the appeal while confirming the order impugned. Accordingly, the appeal is dismissed. Consequently, C.M.P. No.10832 of 2020 stands closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vga

To
The Judge,
The Family Court,
Salem.

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

+1cc to M/s.R.Meenal, Advocate, S.R.No.3007 (21/09/2021)

A.S. No.890 of 2020 and
C.M.P. No.10832 of 2020

PPA(CO)
RGA(20/09/2021)