



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2021

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THE HON'BLE MR.JUSTICE S.S.SUNDAR

A.S.No.648 of 2018

1. Thiyagarajan
2. M.Aarthi
3. Minor T.Yogasri
4. Minor T.Akshaya

Minor Appellants 3 and 4
Rep. by Mother and Guardian
2nd Appellant M.Aarthi

... Appellants/Defendants 2 to 5

Vs.

1. S.Poomathi
2. P.Abinaya
3. P.Pavithra
4. Leelavathi

... Respondents 1 to 3/Plaintiffs

... 4th Respondent/1st Defendants

Appeal Suit is filed under Section 96 of the Civil Procedure Code 1908, to set aside the Judgment and Decree dated 13.06.2018 made in O.S.No.26 of 2013 on the file of the IV Additional District Court, Erode District at Bhavani.

For Appellants : M/s.Zeenath Begum

For R1 to R3 : Mr.N.Manokaran

R4 : NA

JUDGMENT

This Appeal Suit is directed against the Judgment and Decree dated 13.06.2018 made in O.S.No.26 of 2013 on the file of the IV Additional District Court, Erode District at Bhavani.

2. The defendants 2 to 5 in the suit in O.S.No.26 of 2013



are the appellants herein. The 1st appellant is the husband of the 1st respondent and respondents 2 and 3 are the daughters of the 1st appellant. Similarly, the 4th respondent is the mother of the 1st appellant. The respondents 1 to 3 as plaintiffs filed a suit in O.S.No.26 of 2013 for maintenance and for partition of 1/6th share in all the suit properties. In this case, the relationship between the parties is not in dispute.

3. The appellants are defendants 2 to 5 in the suit and the 4th respondent in the appeal is the 1st defendant in the suit. The 4th respondent is the mother of the 1st appellant. The 1st appellant is the husband of the 1st respondent and the appellants 2 to 4 are the 4th wife and children born to the 4th wife of 1st appellant. There is no dispute that the 1st respondent is the 1st wife of the 1st appellant who married the 1st respondent on 26.05.1993. Out of the wedlock, the plaintiffs 2 and 3 namely the respondents 2 and 3 herein were born.

4. The Trial Court decreed the suit in part by granting maintenance to the plaintiffs at the rate of Rs.5,000/- per month to the 1st plaintiff from the date of plaint and by directing the 1st appellant to pay a sum of Rs.5,000/- per month to each of the plaintiffs 2 and 3 from the date of plaint till the date of their marriage. The further direction issued to the 2nd defendant / 1st appellant was to pay a sum of Rs.1,00,000/- to the plaintiffs 2 and 3 every year from 2013 till the completion of their studies. Charge was also directed to be created over the 1/2 share of the suit properties of the 2nd defendant / 1st appellant in lieu of the maintenance payable to the plaintiffs. The suit in respect of relief of partition is dismissed, since the property belonged to the father of the 1st appellant and that the 1st appellant's father died after 1956. Aggrieved by the Judgment and Decree dated 13.06.2018 passed by the Lower Court granting maintenance in favour of the respondents 1 to 3, the appeal has been preferred by the husband / 1st appellant.

5. The learned counsel appearing for the appellants submitted that respondents 1 to 3 are being maintained by the 1st appellant and therefore the decree granted by the Lower Court is unsustainable. It is also stated that the 1st respondent had voluntarily left the matrimonial home and therefore she is not entitled to claim maintenance.

6. The learned counsel for the appellants further submitted that the 1st appellant is bearing the expenses for the maintenance and studies of the minor children and therefore the Lower Court ought not to have granted a decree for maintenance.



7. The only submission reiterated by the learned counsel for the appellants is that the respondents 1 to 3 are being maintained by the father and that the father is also taking care of the education expenses of the minor children. The issue regarding liability towards maintenance is not in dispute. The case of the appellants that the 1st appellant was maintaining the respondents 1 to 3 before suit may be a fact. However, the liability of the 1st appellant to maintain the wife and children cannot be ignored.

8. Section 18 of the Hindu Adoptions and Maintenance Act 1956 reads as follows :

"18. Maintenance of wife -

(1) Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her life time.

(2) A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance.

(a) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or wilfully neglecting her;

(b) if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband;

(c) if he is suffering from a virulent form of leprosy;

(d) if he has any other wife living;

(e) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere;

(f) if he has ceased to be a Hindu by conversion to another religion;

(g) if there is any other cause justifying living separately.

(3) A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.

(i) The wife had been living alone and all the children had been brought up by her without any assistance



and help from the husband and there was a clear case of desertion, the wife was entitled to separate residence and maintenance; Meera Nireshwalia v. Sukumar Nireshwalia, AIR 1994 Mad 168.

(ii) The thoughtless action of the husband of evicting the wife from the house where she had been living in collusion with the purchasers of the house and the police inflicted a deep wound on her amounting to cruelty, the wife was entitled to live separately and claim maintenance; Meera Nireshwalia v. Sukumar Nireshwalia, AIR 1994 Mad 168.

(iii) The claim for maintenance by a wife can also be sustained under clause (g) even on a ground covered by one or other clauses i.e. clause (a) to (f) of section 18(2) substantially but not fully. Merely because the wife fails to strictly prove the specific grounds urged by her, she cannot be denied relief; Meera Nireshwalia v. Sukumar Nireshwalia, AIR 1994 Mad 168."

9. As per Section 18 of the Hindu Adoptions and Maintenance Act, the 1st appellant is liable to maintain the wife. However, the husband relied upon the document Ex.A1.

10. The learned counsel appearing for the appellants though stated that the wife is not entitled to claim maintenance, the learned counsel appearing for the respondents submitted that the wife was compelled to go out of the matrimonial home as the 1st appellant was living with another wife. It is not in dispute that the 1st appellant has married the 4th wife during the subsistence of 1st marriage.

11. It is admitted that the husband had earlier filed a petition for Restitution of Conjugal Rights and obtained a decree. Thereafter, the husband filed a petition for divorce in H.M.O.P.No.40 of 2004 on the file of the Sub Court, Bhavani. The certified copy of the order is marked as Ex.A1 in the suit. A reading of the proceedings in H.M.O.P.No.40 of 2004 clearly indicate that the 1st respondent was found justified to live separately. As a matter of fact, there was a categorical finding that the wife was forced to live separately on account of her husband living with another lady in the matrimonial home. It is for the said reason, divorce was granted with a specific finding that the husband is liable to maintain the 1st wife and children.

12. The learned counsel appearing for the respondents relied upon the Judgment of Hon'ble Supreme Court in the case Smt. Rohini Kumari Vs. Narendra Singh reported in 1972(1) SCC 1, wherein, the Hon'ble Supreme Court considered the entitlement of



wife to get maintenance even if she is living separately from her husband and held that she has a right to live separately in certain circumstances. Paragraph 10 of the said Judgment is relevant to the facts of this case. Hence, in view of the finding of the Learned Subordinate Judge in H.M.O.P.No.40 of 2004 and in view of the specific provisions of the Hindu Adoptions and Marriage Act 1956, this Court is unable to find any infirmity or irregularity in the order passed by the Lower Court granting maintenance to the respondents 1 to 3.

13. The learned counsel appearing for the appellants has not made any submission with regard to the status of parties or other aspects to reduce the amount. For the reasons stated, this Court finds no merit in the appeal and accordingly this appeal is dismissed. No costs.

14. It is clarified that the wife is entitled to maintenance till her death and the respondents 2 and 3 are entitled to maintenance till their marriage.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

raja

To

1.The IV Additional District Judge,
The IV Additional District Court,
Erode District at Bhavani.

Copy To

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

+1cc to Mr.Zeenath Begum, Advocate SR.No.61880
+1cc to Mr.M.Manokaran, Advocate SR.No.62064

A.S.No.648 of 2018

RSI(CO)
GN(19/01/2022)