



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.04.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.834 of 2013

and

M.P. (MD)No.1 of 2013

1.Akila

2.Karthiga

(2nd appellant is suo motu declared as
major vide order dated 26.04.2021 in
S.A. (MD)No.834 of 2013)

3.Minor.Santhose

... Appellants/
Respondents/Plaintiffs

(3rd appellant is represented by his mother
and Natural guardian by the first
appellant)

Vs.

Sasi

... Respondent/Appellant/
Defendant

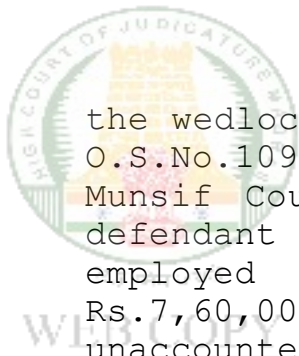
Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 25.06.2013 made in A.S.No.104 of 2012, on the file of the II Additional Sub Court, Nagercoil(Camp at Padmanabhapuram) reversing the judgment and decree dated 30.08.2012 made in O.S.No.109 of 2011, on the file of the Principal District Munsif cum Judicial Magistrate, Eraniel.

For Appellants : Mr.H.Velavadhas

For Respondent : Mr.J.Jeyakumaran

JUDGEMENT

The plaintiffs in O.S.No.109 of 2011 on the file of the District Munsif Court, Eraniel are the appellants in this second appeal. The case of the plaintiffs is that the marriage between the first plaintiff/Akila and the respondent/Sasi took place on 11.09.2002 and the second and third appellants were born through



the wedlock. Since the defendant did not maintain the plaintiffs, O.S.No.109 of 2011 came to be instituted before the District Munsif Court, Eraniel, seeking the relief of maintenance. The defendant filed his written statement stating that when he was employed abroad, he had remitted approximately a sum of Rs.7,60,000/- to the account of his wife and that the same remains unaccounted. Since the first plaintiff declined to return the said amount, problem arose. The defendant took the stand that it was his wife who without any justification withdrew her conjugal company. The first plaintiff examined herself as P.W.1 and marked Exs.A.1 to A.6. The defendant examined himself as D.W.1 and the bank manager as D.W.2. Exs.B.1 to B.3 were also marked.

2.The Trial Munsif by judgment and decree dated 30.08.2012, decreed the suit and directed the defendant to pay a sum of Rs.1,000/- per month to each of the plaintiffs (Sum of Rs.3,000/- per month). Aggrieved by the same, the defendant filed A.S.No.104 of 2012 before the II Additional Sub Court, Padmanabhapuram. In the appeal, the defendant filed I.A.No.35 of 2013 for marking the report of the Social Welfare Officer. The appellate court allowed the said petition filed under Order 41 Rule 27 of Civil Procedure Code. The appellate court noted that the defendant had established the remittance of a sum of Rs.7,00,834/- to the account of the first plaintiff and that the first plaintiff has not explained as to how the said amount has been spent. It was further noted that when the first plaintiff lodged a domestic violence complaint, enquiry was conducted by the Social Welfare Officer and Ex.B.4 is the report submitted by him. The appellate court on a perusal of Ex.B.4 came to the conclusion that the first plaintiff had conceded that if the defendant constructed a house, she would fund the same. From this, the appellate court came to the conclusion that the first plaintiff is very much having the means and that she had deliberately suppressed the material facts and that adverse inference has to be drawn as she had not accounted for the amount of Rs.7,00,000/- received from her husband. In this view of the matter, the judgment and decree passed by the trial court was reversed by judgment and decree dated 25.06.2013. Questioning the same, this second appeal was filed.

3.The second appeal was admitted on the following substantial questions of law:-

"(a) Whether the wife can be denied of her right of maintenance only on the ground that she was in possession of money sent by her husband which remained unaccounted for?

(b) Whether the children who are minors can be deprived of their right to get maintenance one account



of the conduct exhibited by the wife?"

4. Heard the learned counsel on either side.

5. The learned counsel for the appellants reiterated the contentions set out in the memorandum of grounds and took me through the pleadings as well as evidence and submitted that the substantial questions of law deserve to be answered in favour of the appellants. He prayed for restoration of the judgment and decree passed by the trial court.

6. Per contra, the learned counsel for the respondent submitted that the first appellate court has given convincing and cogent reasons for setting aside the judgment and decree passed by the trial court. He also submitted that no substantial question of law arises for consideration. He pressed for dismissal of the second appeal.

7. I carefully considered the rival contentions and went through the evidence on record. The relationship between the parties is not in doubt. The respondent is the husband of the first appellant and the father of the second and third appellants. The second appellant is the daughter while the third appellant is the son. The appellate court has chosen to reverse the maintenance decree passed by the trial court for two reasons:-

(a) The first plaintiff has not explained as to how she had spent the amount of Rs.7,00,000/- remitted by the defendant, when he was employed abroad.

(b) The first plaintiff had offered to fund the construction of building, if the defendant is ready. That showed that the first plaintiff is possessed of the requisite means.

8. That the defendant had remitted a sum of Rs.7,00,000/- to the account of the first plaintiff has been established by virtue of Ex.B.4. I went through the statement of account given by the bank manager, who was examined as D.W.2. It can be seen therefrom that the bank account of the first plaintiff/Akila showed nil balance in April 2006 and that by August 2011, it had swelled to Rs.7,01,396/-. The maintenance suit was filed in May 2011. The defendant would state when he arrived from abroad in April 2011, the first plaintiff demanded that the defendant's property should be transferred to her name and that was the cause for marital discord. There is absolutely no whisper about the remittance of a sum of Rs.7,00,000/- in the bank account of the first plaintiff. It is true that this remittance was made over a period of five years. But then the amount had not been spent at all. When the first plaintiff's balance was zero in April 2006, it has swelled to Rs.7,00,000/- by April, 2011. From this one can come to the conclusion that the first plaintiff was possessed of some means,



when she filed the suit in question and therefore reversal of the judgment and decree of the trial court by the first appellate court as far as the first plaintiff is concerned has some justification. But there is absolutely no justification for reversing the maintenance decree as regards the second and third appellants are concerned. The defendant as a father is statutorily and legally bound to maintain his children. The children are admittedly with the mother namely., the first appellant herein.

9.That apart, the construction of Ex.B.4 by the appellate court is clearly perverse. Ex.B.4 is the report of Social Welfare Officer. It appears to have been straightaway marked by the first appellate court. The first appellate court did not follow the procedure laid down in Order 41 of Civil Procedure Code, the first appellate court could have marked Ex.B.4 only through the author of the document. The author of the document was never examined as witness. Even glossing over this procedural lapse, all that Ex.B.4 states is that if the defendant sets up an independent house, the first plaintiff is ready to extend her assistance to the extent possible. She had clearly stated that she was not in a position to given financial assistance on the date when the enquiry was concluded. Therefore, from a perusal of Ex.B.4, the appellate court could not have come to the conclusion that the first plaintiff had conceded that she was having the means to fund any construction of a building that may be put by a defendant. Therefore, the first substantial question of law is answered in favour of the respondent but the second substantial question of law is answered in favour of the appellants. The judgment and decree of the first appellate court is interfered with and the judgment and decree of the trial court is restored insofar as second and third appellants are concerned. The second appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD II)

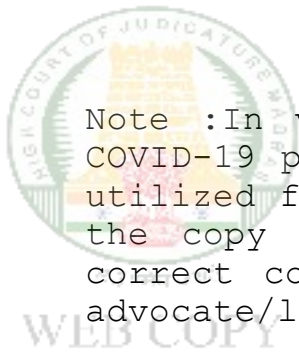
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/ /2021

Sub Assistant Registrar (CS)

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To:

- 1.The II Additional Subordinate Judge
(Camp at Padmanabhapuram)
Nagercoil.
 - 2.The Principal District Munsif cum Judicial Magistrate,
Eraniel.
 - 3.The Record Keeper-2 copies
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.
- +1 CC to Mr.H.VELAVADHAS, Advocate (SR-17629[F] dated
27/04/2021)

**S.A. (MD) No.834 of 2013
26.04.2021**

KM(03.06.2021) 5P 6C