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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2022

CORAM

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

S.A.NO.534 OF 2006

Kasthuri @ Krishnamoorthy ...Appellant / Respondent /
Defendant

Vs.

Rani ...Respondent / Appellant /
Plaintiff

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 01.07.2005 passed in A.S. No.15 of 2005, on the file of the Principal District Court, Salem, reversing the decree and judgment dated 19.09.2003 passed in O.S. No.4 of 2003, on the file of the Sub Court, Mettur.

For Appellants : Mr.V.R.Anna Gandhi
For Respondent : Mr.Arun
for Mr.A.Sundaravathanan

JUDGMENT

The respondent/plaintiff filed a suit in O.S.No.4 of 2003 seeking for maintenance from the appellant/defendant.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and in appropriate places, their rank in the present appeal would also be indicated.

3. The case of the plaintiff in nutshell is as follows:

The plaintiff is the wife of the defendant and their marriage was solemnized according to Hindu Rites and Customs on 27.06.1988 at Perumal Koil, Poochur, Pennagaram Taluk, Dharmapuri District. The defendant was unemployed initially and thereafter, he joined Tamil Nadu Electricity Board as a helper. The defendant used to assault the plaintiff. Since the plaintiff and the defendant did not have any child, the plaintiff went for a medical check up and even though the doctor certified that she is 100% fit to have a child, the defendant wanted to marry another lady. Since it was not acceded to by the plaintiff, the defendant attempted to murder her. Therefore, she left the matrimonial home and started living with her parents. Though



elders in the family tried to settle the dispute between the plaintiff and the defendant all their efforts went in vain. The defendant, thereafter, refused to live with the plaintiff. Therefore, the plaintiff filed a suit claiming maintenance of a sum of Rs.2,000/- per month.

4.The suit was resisted by the defendant on the following grounds :

- i. All the allegations contained in the plaint are false.
- ii. Even from the date of marriage the plaintiff did not cooperate with the defendant and refused to live with him initially.
- iii. The defendant is ready and willing to live with the plaintiff and never treated his wife cruelly.
- iv. The defendant is receiving only a sum of Rs.1,500/- per month after various deductions and therefore, it is not possible for him to pay a sum of Rs.2,000/- per month.

5. The trial Court on the basis of the above pleadings framed the following issues :

- i. Whether the cruelty and desertion as alleged by the plaintiff are true?
- ii. Whether the plaintiff is entitled to get maintenance from the defendant ?
- iii. If so to what amount ?
- iv. Whether the plaintiff is entitled to past maintenance as claimed by her ?
- v. To what relief ?

6. In the trial Court, the plaintiff examined herself and one another witness and marked Ex.A1. The defendant examined himself and one another witness. However, no documents were marked on his side.

7. After full trial, the learned Subordinate Judge, Mettur, dismissed the suit filed by the plaintiff vide his decree and judgment dated 01.07.2005 by observing that since the grounds of cruelty and desertion as alleged by the plaintiff have not been proved by her she is not entitled to get maintenance from her husband / defendant. It is further observed that the plaintiff is living separately on her own accord and without any justifiable cause and therefore, she cannot claim maintenance from her husband.

8. Aggrieved over the same, the plaintiff filed an appeal before the Principal District Court, Salem, in A.S. No.15 of 2005. The learned Principal District Judge, after analyzing the oral and documentary evidence adduced on both sides reversed the findings recorded by the trial Court and decreed the suit filed by the plaintiff with costs.



9. Now the present second appeal is filed by the defendant on the following substantial questions of law:

- i. Whether the lower appellate Court is right in decreeing the suit in spite of the clear admission by P.W.1 that she is not willing to live with her husband?
- ii. When there is no pleading of adultery by the defendant, whether the lower appellate Court is right in rendering the finding that the defendant has committed adultery?
- iii. Whether the lower appellate Court is right in fixing the salary of the defendant without any proof and evidence?

10. Heard Mr.V.R.Annadurai, learned counsel appearing for the appellant and Mr.Arun for Mr.A.Sundaravathanan, learned counsel appearing for the respondent.

11. Mr.V.R.Annadurai, learned counsel appearing for the appellant contended that the first appellate Court mainly relying on a letter dated 03.01.2000 (Ex.A1) sent by the plaintiff to the defendant, had decreed the suit filed by the plaintiff. His further contention is that the trial Court rightly dismissed the suit.

12. Per contra, Mr.Arun, learned counsel appearing for the respondent contended that the plaintiff was physically and mentally tortured by the defendant and therefore she had to leave her matrimonial home and in such circumstances the defendant/husband of the plaintiff is bound to maintain his wife.

13. It is the case of the plaintiff that the defendant used to physically assault her and also attempted to murder her on 28.07.1997 and therefore she could not live with her husband. It is also her contention that the defendant had married one Jaya and also got a child through her. According to her, the defendant also suspected her fidelity and sent a legal notice dated 03.01.2000 (Ex.A1) in this regard.

14. In the first appellate Court, the plaintiff adduced additional documents (Ex.A2 to Ex.A4). Ex.A3 is the judgment in O.S.No.206/2000 on the file of the District Munsif Court, Mettur. In the said suit the plaintiff had prayed for a declaration and permanent injunction against the defendant from restraining the latter to make any change in the nomination papers in his Service Register maintained by the Tamil Nadu Electricity Board. The suit was decreed as is seen from the certified copy of the decree (Ex.A2). She has further alleged that she lodged a complaint with the Deputy Superintendent of Police, Salem on 10.12.2004 against her husband.



15. A colleague of the defendant was examined as P.W.2 who had categorically deposed that the defendant is a drunkard and he is living with another woman and also got a child through her. Nothing useful was suggested to P.W.2, during the course of cross examination, to discredit or disbelieve his evidence. The defendant had sent a letter (Ex.A1) to the plaintiff that she is neglecting him (defendant) and that she is having an illicit relationship with her sister's husband. Thus, it is clear from Ex.A1 dated 03.01.2000 that the plaintiff was subjected to mental cruelty and therefore the trial Court's observation that she is living on her own accord without any justifiable cause cannot be sustained. The first appellate Court had in fact analysed the oral and documentary evidence adduced on both sides in the proper perspective and I do not find any reason to interfere with the findings recorded by the first appellate Court.

16. The defendant during the course of cross examination admitted that he was permanently employed with the Tamil Nadu Electricity board receiving a salary of Rs.5,000/- per month. In the circumstances, awarding maintenance of Rs.2,000/- to the plaintiff cannot be said to be excessive. Thus, the substantial questions of law are answered accordingly. In fine, the second appeal fails and is dismissed.

17. In the result,

- i. the second appeal is dismissed. No costs.
- ii. the decree and judgment dated 01.07.2005 passed in A.S. No.15 of 2005, on the file of the Principal District Court, Salem, is upheld and
- iii. the decree and judgment dated 19.09.2003 passed in O.S. No.4 of 2003, on the file of the Sub Court, Mettur, is set aside.

Sd/-
Assistant Registrar (CS-II)

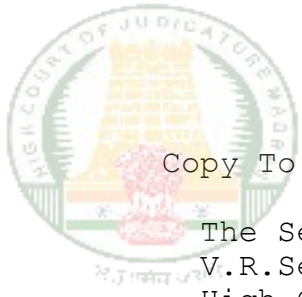
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Sub Assistant Registrar

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To

1. The Principal District Judge,
The Principal District Court,
Salem.
2. The Sub Judge,
The Subordinate Court, Mettur.



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

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JPL (CO)
RVM(08/06/2022)