



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21/01/2022

CORAM :

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

S.A.NO.63 OF 2014

Gunasekaran

...Appellant / Appellant /
Defendant

Vs.

G.Kavitha

...Respondent / Respondent /
Plaintiff

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 16.08.2013 passed in A.S.No.16 of 2012 on the file of Subordinate Judge, Poonamallee, partly modifying the judgment and decree dated 31.10.2011 passed in O.S.No.292 of 2003 on the file of Additional District Munsif, Poonamallee.

For Appellant : Mr.R.Bharath Kumar

For Respondent : Mr.G.Dilip Kumar

J U D G M E N T

Unsuccessful defendant is the appellant before this Court.

2.The plaintiff filed a Suit for recovery of maintenance from June 2003 and to create charge over the Suit property for the maintenance payable to the plaintiff by the defendant. According to the plaintiff, she married the appellant / defendant on 25.04.1993 as per Hindu Rites and Customs and she was given Sridhana of 10 sovereigns of gold jewels and two sovereigns of gold chain and ring to the defendant. After marriage, the defendant quit the job taking substantial amount. He ill treated the plaintiff without any reasons. She begot two male children and lived in an un-hygienic and sub-human environment. Whenever she made any request, she will be treated harshly and sent away to her parents house. Unable to bear the physical and mental cruelty, she used to go to her parents house and return home after the defendant's anger recedes. Unable to bear the physical cruelty, she is living away from the defendant and living with her parents. Her parents and brothers supported her and her children and provided them food, shelter and



clothing. They are finding it difficult to provide financial assistance to the plaintiff and her children and therefore, she claimed Rs.1,250/- per month to her and another sum of Rs.1,500/- per month to maintain her two children. She restricted her prayer in the Suit for future maintenance alone.

3. In the written statement, the defendant denied the averments of Sridhanas and the expenditure made by the plaintiff's parents. The plaintiff insisted to get partition of the property on the ill-advice of the plaintiff's mother and deserted him and living separately. The plaintiff and her mother always interested in lodging complaints against the defendant. The allegations of torture and un-hygienic and sub-human environment are all false. He never inflicted any physical injury and he was maintaining the plaintiff and his children when they lived in the same house. In fact, the matter was compromised between themselves and the Suit was dismissed for default. Thereafter, the plaintiff lived with the defendant in the same house between 2004 and 2007. But, it seems that the Suit was restored and got decreed and the plaintiff filed an execution petition. During the stay of the plaintiff, he only maintained the children and paid their school fees and other household expenses. The plaintiff is employed and getting a good salary of Rs.5,000/- per month. Whereas, the defendant is unemployed and therefore, she is not entitled to any maintenance.

4. The Trial Court, after framing appropriate issues, decreed the Suit and granted maintenance @ Rs.1250/- per month from June 2003 and created charge over the property. On appeal, the First Appellate Court modified the decree by excluding maintenance for the period from 2004-2007 and confirmed the decree and judgment on all other aspects. Aggrieved over the same, the defendant has preferred the above Second Appeal.

5. This Court admitted the Second Appeal on 28.02.2019 on the following substantial questions of law:-

(i) Whether the courts below are correct and justified in creating a charge over the joint family property for the alleged maintenance payable by the defendant?

(ii) Whether the plaintiff is entitled to claim maintenance from the defendant when she herself voluntarily deserted, the defendant for some trivial reasons and failed to fulfill her conjugal obligation in spite of Ex.A1 Legal Notice dated 30.01.2002?

(iii) Whether the First Appellate Court is correct and justified in creating a charge over the entire suit property which belongs to joint



family, when particularly the defendant himself is ready and willing to deposit the considerable amount for the past and future maintenance?

6. Heard the submissions made on either side and perused the materials available on record.

7. Admittedly, the Suit is filed for recovery of maintenance amount from the year 2003 @ Rs.1250/- per month and to create charge over the property. The plaintiff is employed and the defendant is unemployed. A perusal of the evidence let in before the Court discloses the fact that the claim of partition in the joint family property by the plaintiff's mother is the root cause of the matter. Even though allegations are made in the plaint of physical torture and ill-treatment, it appears that there is no serious complaints or incidents alleged against the defendant for such acts. It is also pertinent to note that during the pendency of the appeal, the appellant/defendant offered to deposit a sum of Rs.1,50,000/- towards arrears of maintenance and Rs.1,50,000/- towards future maintenance. The application was dismissed by the First Appellate Court on the ground that this was made with an ulterior motive to get the charge over the property lifted. Now that, the substantial questions of law to be decided is whether creating a charge over the entire joint family property is justified or not? and whether the plaintiff is entitled to claim maintenance, after having voluntarily deserted the defendant on trivial reasons and failed to fulfill for conjugal obligation in spite of the legal notice issued by the plaintiff.

8. As discussed above, the misunderstanding between the plaintiff and the defendant appeared to be trivial. This Court had taken efforts to lead the parties for an amicable settlement by referring it to mediation. Though the misunderstanding between the parties is trivial, the root cause for such separation is very strong. Unless the plaintiff's mother gets a share in the property, this problem cannot be solved. However, it is an admitted fact that the parties are husband and wife and the husband is duty bound to maintain his wife. Even though it is admitted by the plaintiff that she was earning about Rs.5,000/- per month, it shall be borne in mind that she is educating her children and they were studying 11th and 8th standard respectively during the year 2003. There was no maintenance claimed on behalf of the children. The maintenance was only with respect to the wife. It is admitted by the defendant that he has not paid any maintenance to her after 2007.

9. Considering the totality of the circumstances and the close relationship between the parties, namely, husband and



wife, and the wife being the defendant's own sister's daughter, this Court is of the considered opinion that the award of maintenance concurrently made by the Courts below is not unreasonable. Considering the income of the defendant, the Courts have reasonably fixed the maintenance. Now that the defendant had offered to deposit a sum of Rs.1,50,000/- towards arrears of maintenance and Rs.1,50,000/- towards future maintenance for lifting the charge over the property. This Court permits the appellant to deposit such amounts.

10.It only remains to discuss about the charge created over the entire Suit property which belongs to the joint family including the plaintiff's mother for the maintenance payable to the plaintiff instead of creating a charge only to the extent of the share of the defendant in the Suit property. Admittedly, the plaintiff's mother, who is the sister of the defendant has already filed a Suit for partition in a Civil Court. This reveals the fact that the Suit property is a joint family property. The defendant has three brothers and one sister, who is none other than the plaintiff's mother. From the admitted fact that it is a joint family property and that the defendant is entitled to only one share in the Suit property, a charge cannot be created for the entire property, but it can be created over the defendant's share alone.

11.In such circumstances, the judgment and decree dated 16.08.2013 passed in A.S.No.16 of 2012 by the learned Subordinate Judge, Poonamallee, is modified to the following extent :-

(i) The defendant is directed to deposit a sum of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand Only) towards arrears of maintenance and Rs.1,50,000/- (Rupees One Lakh Fifty Thousand Only) towards future maintenance and continue to pay maintenance on or before 10th of every English calendar month after adjusting amounts already deposited before the Execution Court.

(ii) On such deposit, the charge created over the entire property is restricted to the extent of defendant's share alone.

(iii) If any attempt is made by the defendant relinquishing his share in the Suit property, the property shall devolve upon his two sons as undertaken by him and it shall not be encumbered in favour of his brothers or the third parties. The charge created over the defendant's share will operate against him.



12. With these directions, the Second Appeal is partly allowed. No costs.

WEB COPY

Sd/-
Assistant Registrar (CS-IX)

// True Copy //

Sub Assistant Registrar

TK

To

1. The Subordinate Judge
Poonamallee.

2. The Additional District Munsif
Poonamallee.

+1cc to M/s. R. Bharath Kumar, Advocate Sr.No. 4073

S.A.NO.63 OF 2014

RGN (CO)
RVM (06/06/2022)