



WEB COPY

S.A(MD)No.390 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A(MD)No.390 of 2010

and

M.P(MD)No.1 of 2010

1.Gnanamuthu

2.Lysammal

... Appellants 1 & 2/

Respondents 2 & 3

-Vs-

1.Amirtha Bai

... 1st Respondent / Appellant/
Plaintiff

2.R.David

... 2nd Respondent/ 4th Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree passed in A.S.No.246 of 2003, dated 06.10.2009 on the file of the District Court, Kanyakumari at Nagercoil reversing the judgment and decree in O.S.No.143 of 1998 dated 01.08.2003 on the file of the Sub Court, Padmanabhapuram.

For Appellants

: Mr.V.Jeyapragash

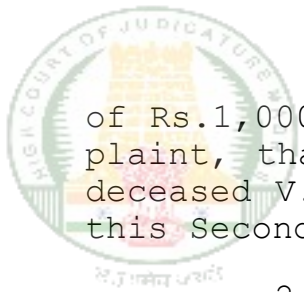
For Respondents

: Mr.B.Brigesh Kishore for R.1

No Apperance for R.2

JUDGMENT

This Second Appeal arises out of a maintenance suit. The first respondent / Amirtha Bai got married to Thiru.V.K.Raju on 12.06.1994. Alleging that she has not been maintained, she filed O.S.No.143 of 1998 on the file of Sub Court, Padmanabapuram. V.K.Raju filed written statement controverting the plaint averments. Based on the divergent pleadings, issues were framed. The plaintiff examined herself as P.W.1 and three other witnesses were examined on her side. Ex.A1 to Ex.A7 were marked. V.K.Raju examined himself as D.W.1 and one Suresh was examined as D.W.2. No documentary evidence was adduced. After consideration of evidence on record, the trial Court, by judgment and decree, dated 01.08.2003 dismissed the suit. Aggrieved by the same, Amirtha Bai filed A.S.No.246 of 2003 before the learned District Court, Nagercoil, Kanyakumari District. During the pendency of the first appeal, the husband passed away and the appellants herein came on record. The appellants also filed I.A.No.69 of 2008 for marking the partition deed dated 08.10.1998 executed between the deceased V.K.Raju and other members of the family. The first appellate Court dismissed I.A.No.69 of 2008, because there was no reference to the partition deed in the written statement filed by V.K.Raju. However, it decreed suit by directing the appellants herein to pay the plaintiff a sum



of Rs.1,000/- (Rupees One Thousand only) per month from the date of plaint, that is 27.10.1998, till realisation from the share of the deceased V.K.Raju in the schedule property. Aggrieved by the same, this Second Appeal came to be filed.

2. This Second Appeal was admitted on 28.04.2010 on the following substantial questions of laws:-

"1. Whether the lower appellate court is right in holding that the appellants who are the LRs of the deceased husband are liable to pay maintenance from an out of the property inherited by them from the deceased husband, in the absence of any proof that the deceased husband left those properties.

2. Whether the lower appellate court is right in granting the maintenance when it is proved that the wife is living separately on her own and it is against the desire of the husband "

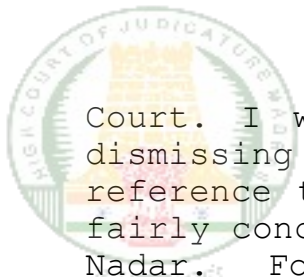
3. The learned counsel appearing for the appellants reiterated all the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial questions of law in favour of the appellants and set aside the impugned judgment and decree and restore the decision of the trial Court.

4. Per contra, the learned counsel appearing for the first respondent submitted that the impugned judgment and decree do not warrant any interference.

5. I carefully considered the rival contentions and went through the evidence on record.

6. There is no dispute that the plaintiff Amirtha Bai got married to V.K.Raju on 12.06.1994. It is the duty of any husband to maintain his wife, if she is not having any independent means to take care of herself. In the case on hand, the first appellate Court has given a categorical finding that the plaintiff was entitled to be paid a sum of Rs.1,000/- (Rupees One Thousand only) per month towards maintenance. The first appellate Court is the final Court of fact. Exercising jurisdiction under Section 100 C.P.C, I do not find any ground to interfere with such finding.

7. It is true that no personal decree can be passed against the appellants. The grievance of the appellants appears to be that the partition deed was not allowed to be marked in the first appellate



Court. I will not find fault with the first appellate Court for dismissing I.A.No.69 of 2008, because V.R.Raju did not make any reference to it in his written statement. Be that as it may, it is fairly conceded that the property in question belonged to Vethakannu Nadar. Following his demise, it devolved in equal shares on his three children. There is also no dispute that V.K.Raju had 1/3rd share in the suit property. The plaintiff / decree holder can proceed only against the 1/3rd share of her husband in the schedule property. In fact, the plaintiff as the class 1 legal heir can take the said property. Though not said in so many words, that is the effect of the impugned judgment and decree passed by the first appellate Court. The only remedy open to the plaintiff / first respondent is to proceed against her husband's 1/3rd share in the suit property. Substantial questions of law are accordingly answered and the impugned judgment and decree passed by the first appellate Court is confirmed.

8. With this observation and clarification, this Second Appeal is disposed of, accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

mga

To:

- 1.The District Court, Nagercoil, Kanyakumari.
- 2.The Sub Court, Padmanabhapuram.

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The Section Officer,Vernacular Records,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.C.GODWIN, Advocate (SR-9678[F] dated 03/03/2022)

+1 CC to M/s.B.BRIJESH KISHORE, Advocate (SR-10227[F] dated 04/03/2022)

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