



A.S.(MD)No.180 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.10.2022

Pronounced on : 13.12.2022

CORAM:

THE HON'BLE MR.JUSTICE **K.MURALI SHANKAR**

A.S.(MD)No.180 of 2015

and

M.P.(MD)No.2 of 2015

Shanthi

...Appellant/Plaintiff

Vs.

1.T.Dhanapal

2.The District Collector,
State Government of Tamilnadu,
Madurai District,
Madurai.

...Respondents/Defendants

3.The Branch Manager,
Punjab National Bank,
South Raja Veethi,
Pudukottai.

...Respondent/Garnishee

Prayer : This Appeal Suit filed under Order 41 Rule 1 and Section 96 of Code of Civil Procedure, to modify the decree and judgment passed by the Family Court, Madurai in O.S.No.36 of 2010 dated 14.10.2014 and allow this appeal with costs.



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For Appellant : Mr.R.L.Dilipan Pandian
for Mr.R.Lakshmanan

For R2 : Mr.N.Muthuvijayan
Special Government Pleader

For R1 & R3 : No appearance

JUDGMENT

The Appeal Suit is directed against the decree and judgment passed in O.S.No.36 of 2010 dated 14.10.2014 on the file of the Family Court, Madurai.

2. The case of the plaintiff in short is as follows:-

(a) The plaintiff is the second daughter of the first defendant. Due to misunderstanding between her father and mother Clara, the first defendant deserted the plaintiff and his family members. The plaintiff's mother filed a petition for maintenance in M.C.No.2 of 1997 on the file of the Family Court on behalf of herself and other children including the plaintiff. During enquiry, on the basis of the undertaking given by the first defendant to live with the family and to maintain the children including the plaintiff, maintenance case in M.C.No.2 of 1997 was ordered to be dismissed as infructuous. Even after the undertaking given by the first defendant, he had not chosen to maintain the



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children including the plaintiff and the plaintiff's mother had managed to bring up her children with her little earnings and also from the personal borrowings.

The first defendant has neglected to maintain the plaintiff. The plaintiff had completed her graduation in M.Sc. with great hardship and with her mother's hard earned money.

(b) Despite the best efforts made by the plaintiff, she is not able to get a suitable job and she is not able to maintain herself as she is not having any independent income of her own. The first defendant being the father is legally liable to maintain the plaintiff. The first defendant is working as a Clerk in Punjab National Bank and is drawing a salary of Rs.25,000/- per month. The plaintiff estimates that a sum of Rs.3,000/- per month is required for her maintenance. Hence, the plaintiff filed the suit to declare her as indigent person and directing the first defendant to pay a sum of Rs.3,000/- as monthly maintenance and costs of the proceedings.

3. The defence taken by the first defendant in short as follows :-

(a) The plaintiff is the second daughter of the first defendant. After marriage, the plaintiff's mother Clara used to visit her mother's house very often.



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The first defendant, considering the welfare of the family and his children, was residing with the plaintiff's mother by leaving his own mother and unmarried sisters. The first defendant had stood as a surety for his friend in the year 1988 and he was made responsible for repayment of Rs.2,00,000/-. The plaintiff's mother had abused the first defendant and sent him out of the house in 1993. During enquiry in M.C.No.2 of 1997, the Court advised both the parties to live together and on that basis, the case was dismissed as infructuous. The first defendant had started to live with the plaintiff's family and he was allowed to stay in the house only for three months and thereafter, he was sent out of the house.

(b) The first defendant had undergone surgery for kidney problem in 1998 and he was in Madurai Meenakshi Mission Hospital. Despite the intimation, the plaintiff's mother had not visited the hospital. The first defendant is having heart problem and diabetic issues. The plaintiff's mother had completed D.Pharm Course and is working as a Pharmacist in Madurai Rajaji Hospital and is getting a salary of Rs.30,000/- per month. The plaintiff had studied M.Sc. Computer Science and is working in a private concern. The first defendant is having debts to the tune of Rs.10,00,000/- due to the medical expenses. Since the first



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defendant is ready and willing to live with the plaintiff and the plaintiff's mother, the suit is liable to be dismissed.

4. On the basis of the above pleadings, the trial Court has framed the following issues:

(1) Whether the plaintiff is entitled to get maintenance of Rs.3,000/- per month from the first defendant?

(2) To what relief?

5. During trial, the plaintiff has examined her mother Clara as P.W.1 and exhibited the certified copy of petition and order in M.C.No.2 of 1997 as Ex.A.1. The first defendant has examined himself as D.W.1 and adduced no documentary evidence. The second defendant, Collector of Madurai District remained ex-parte.

6. The learned trial Judge, upon considering the evidence, both oral and documentary and on hearing the arguments of both the sides, has passed the impugned judgment dated 14.10.2014 directing the first defendant to pay a sum of Rs.1,500/- per month towards maintenance to the plaintiff from January 2012 onwards until her marriage and also to pay the court fee to the Government.



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Aggrieved by the said judgment and decree, the plaintiff has come forward with the present appeal.

7. The appeal grounds are as follows:-

The trial Court has failed to see that the first respondent/first defendant was working as a Clerk in Punjab National Bank in Pudukottai and was earning considerably. The trial Court has failed to see that the first respondent/first defendant left the appellant/plaintiff and her family from the year of 1993 and thereafter, the first respondent/first defendant neglected the appellant/plaintiff till today and the appellant/plaintiff was brought up by her mother through her hard earned money. The trial Court has failed to consider the economic status of the first respondent/first defendant and he is the bank employee and is earning Rs.40,000/- per month. The fixation of maintenance at Rs.1,500/- is very low. The trial Court, while awarding maintenance at Rs.1,500/- per month, directed the first respondent/first defendant to pay from January 2012 onwards, but no reason was assigned by the trial Court. Hence, the appeal is liable to be allowed.

8. The points that arise for consideration are:

(i) Whether the trial Court erred in fixing the monthly maintenance at Rs.1,500/- per month, despite showing that the first respondent/first defendant



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is working in Punjab National Bank, Pudukottai and is earning more than Rs.40,000/- per month and that the appellant/plaintiff is jobless and is not having any income to maintain herself?

(ii) Whether the trial Court erred in awarding maintenance from January 2012, when the above suit was filed in the year 2010 and without assigning of any reason?

(iii) Whether the appeal is to be allowed?

Points (i) to (iii) :-

9. For the sake of convenience and brevity, the parties herein-after will be referred as per their status / ranking in the trial Court.

10. Admittedly, the plaintiff is the second daughter of the first defendant. The first defendant had married the plaintiff's mother Clara and subsequently, due to misunderstanding between them, they were living separately.

11. It is not in dispute that the plaintiff's mother has laid a maintenance claim for herself and on behalf of her minor children including the plaintiff in M.C.No.2 of 1997 on the file of the Family Court and at the time of enquiry, considering the representation of both the parties that both the parties were said to be living together, the case was ordered to be dismissed as infructuous.



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12. It is also not in dispute that subsequent to the dismissal of the M.C., the first defendant had started to reside with the plaintiff and the plaintiff's mother and he was with the family for three months and thereafter they got separated.

13. It is not in dispute that the plaintiff has completed her graduation in M.Sc. Computer Science.

14. The case of the plaintiff is that though she has completed her Post Graduate course, she is not able to get a suitable job and she is not able to maintain herself as she is not having independent income of her own.

15. It is further case of the plaintiff that the first defendant is working in Punjab National Bank, Pudukottai and is getting monthly salary of Rs.40,000/- and that the first defendant being the father, is legally bound to maintain the plaintiff, who is jobless and unmarried.

16. As per Section 20(3) of the Hindu Adoption and Maintenance Act, the first defendant being the father, is liable to pay maintenance to his daughter till her marriage.



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17. The main defence of the first defendant is that the plaintiff's mother is working as a Pharmacist in Madurai Rajaji Hospital and is getting monthly salary of Rs.30,000/-, that the plaintiff, after completing her M.Sc. Computer Science, is working in a private concern and that therefore since the plaintiff is having income of her own, she is not entitled to claim any maintenance from the first defendant.

18. Admittedly, the first defendant has not chosen to produce the salary certificate or any other records to prove his salary. But the trial Court, considering the evidence available on record and also taking note of the contention of the plaintiff that the first defendant is getting Rs.40,000/- per month and also the completion of Post Graduate Course by the plaintiff, has come to a decision that the plaintiff being unmarried, is entitled to get maintenance from his father till her marriage and fixed the monthly maintenance at Rs.1,500/-. Though the plaintiff has challenged the quantum of maintenance fixed by the trial Court, she has not elaborated anything further.

19. The learned counsel appearing for the plaintiff would submit that their main objection is that the date from which the maintenance was ordered to be



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paid. He would further submit that though the suit was filed on 06.01.2010, the trial Court has directed the first defendant to pay maintenance from January 2012 without any reason.

20. No doubt, as rightly contended by the learned counsel appearing for the plaintiff, the trial Court, without assigning any reasons, has directed the first defendant to pay from January 2012.

21. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in *Rajnesh Vs. Neha and another* reported in (2021) 2 SCC 324, wherein, the Hon'ble Apex Court, while considering the application filed under Section 125 Cr.P.C., directed all the Courts to award maintenance from the date of filing the application for maintenance. Though the above direction was given in the case of maintenance claim filed under Section 125 Cr.P.C., the same principle can very well be applied to the maintenance claim filed under the Hindu Adoptions and Maintenance Act.

22. As already pointed out, the learned trial Judge has not assigned any reason for not awarding the maintenance from the date of suit and for granting the maintenance from the subsequent period.



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23. Considering the above, the finding of the trial Court fixing the maintenance amount at Rs.1,500/- per month cannot be found fault with, but at the same time, the direction of the trial Court to pay the maintenance amount from January 2012 is not supported by any reason and is not in accordance with law and the same is liable to be set aside. Hence, the plaintiff is entitled to get the maintenance amount from the date of suit and the above points are answered accordingly. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs.

24. In the result, this Appeal Suit is partly allowed and the first respondent/first defendant is directed to pay the maintenance at Rs.1,500/- per month to the appellant/plaintiff from the date of suit till her marriage. Parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

13.12.2022

Index :yes/No
Internet:yes/No
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To

1.The Family Court, Madurai.



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K.MURALI SHANKAR,J.

csn

Pre-Delivery Order made in

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and

M.P.(MD)No.2 of 2015

13.12.2022