



A.S.No.63 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

A.S.No.63 of 2014
and M.P.No.1 of 2014

E.Janarthanan

...Defendant /Appellant

-Vs-

1.Kalaiselvi @ Tamilselvy

2.Devi (minor)

Aged about 11 years,

Rep. by her mother & next friend

Kalaiselvi @ Tamilselvy

3.Balaji (minor)

Aged about 9 years,

Rep. by her mother & next friend

Kalaiselvi @ Tamilselvy

...Plaintiffs /Respondents

Prayer:- Appeal Suit filed under Section 96 r/w Order 41 Rule 1 of C.P.C., against the judgment and decree dated 18.06.2013 made in O.S.No.42 of 2007 passed by the learned Family Court Judge, Puducherry.

For Appellant

: Mr.P.Veeraraghavan

For R1

: Mr.K.Chandrasekaran



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JUDGMENT

[Judgment of the Court was made by **S.S.SUNDAR, J.,**]

This appeal is preferred against the judgment and decree dated 18.06.2013 in O.S.No.42 of 2007 on the file of the learned Family Court Judge, Puducherry.

2.The plaintiffs are the wife and children of the defendant in the suit in O.S.No.42 of 2007.

3.The respondents herein are the plaintiffs in O.S.No.42 of 2007 filed the suit for maintenance for directing the defendant to pay a sum of Rs.5,000/- per month as maintenance for the plaintiffs.

4.From the decree, it is seen that suit was filed on 02.11.2007. It appears that the respondents filed an interim application in I.A.No.113 of 2013 for interim maintenance and the Family Court has passed an order directing interim maintenance in favour of the plaintiffs/respondents. Since the appellant/husband failed to pay interim maintenance as directed by the Family Court during the



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pendency of the proceedings, it appears that the plaintiffs filed an interim application in I.A.No.113 of 2013 to strike of the defence raised by the defendant in his written statement which was ordered by the Family Court on 03.06.2013. Thereafter, the suit was taken up, and after finding that the appellant had not paid interim maintenance and arrears as ordered by the Family Court, the suit was decreed as prayed for, without an adjudication on merits and directing the defendant to pay a sum of Rs.5,000/- per month as maintenance. The defendant/appellant was permitted to deduct the amount paid by the defendant towards interim maintenance during the pendency of the suit.

5.The learned counsel appearing for the appellant submitted that the judgment and decree of the Family Court is not based on merits but based on the previous order of the Family Court in I.A.No.113 of 2013 to strike of the defence raised by the appellant.

6.It is true that the judgment and decree of the Family Court directing interim maintenance was not based on merits, but as a consequence of an earlier order of the Family Court in I.A.No.113 of 2013 striking out the defence raised by the appellant on the ground that he had not complied with the direction of the



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Family Court to pay interim maintenance during the pendency of the proceedings.

Though the appellant raised a ground in the Memorandum of Appeal that he has complied with the order, no record is produced to show that he paid the arrears of maintenance as directed by the Family Court.

7.From the reading of the plaint, it is seen that the marriage between the appellant and the 1st respondent took place on 24.04.1995. Respondents 2 and 3 were born in Puducherry on 10.08.1996 and 13.06.1998 respectively. The suit for maintenance was filed on 02.06.2007 and the claim of Rs.5,000/- towards maintenance of wife and two children in the year 2007 is not a huge sum.

8.Having regard to the specific averments made in the plaint, the defendant is cultivating 2 kanies of land and owns substantial properties apart from carrying on business. It is stated that the minors have now become majors. However, the 1st respondent/wife is entitled to get maintenance. The appellant has produced before this Court, the order passed in M.O.P.No.211 of 2007 filed by the appellant/husband to show that the marriage is dissolved. Further the petition filed by the 1st respondent/wife for restitution of conjugal rights in M.O.P.No.250 of 2007 is dismissed. Since the appellant has obtained a decree for divorce as



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against the 1st respondent and the minors/sons of appellant have become majors, the appellant may not be liable for future maintenance. However, this Court is unable to find any ground to interfere with the judgment and decree of the Family Court granting maintenance at the rate of Rs.5,000/- per month. Therefore, this Court is not inclined to interfere with the judgment and decree of the Family Court in O.S.No.42 of 2007. However the liability of the appellant to pay the arrears of maintenance as directed by the Family Court shall be limited to the period up to the decree granting divorce. It is open to the appellant to raise the issue if any other claim is made by the respondents based on the decree in the suit ignoring the legal implication of the decree for divorce which is decreed in favour of the appellant.

9.In the result, the appeal suit stands dismissed subject to the limitation indicated above. No costs. Consequently, connected miscellaneous petition is closed.

[SSSRJ] [AANJ]
23.01.2023

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S.S.SUNDAR, J.,

AND

A.A.NAKKIRAN, J.,
cda

To

- 1.The Family Court Judge, Puducherry.
- 2.The Section Officer, VR Records,
High Court, Chennai.

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