



A.S.No.305 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.No.305 of 2021

Kaladevi

... Appellant/Plaintiff

Vs

Saravanan

. . . Respondent / Defendant

Prayer: Appeal Suit is filed under Section 96 read with Order XLI Rule 1 of C.P.C against the Judgement and Decree dated 06.07.2020 on the file of Principal District Court, Namakkal passed in O.S.No.351 of 2019 (P.O.P.No.37 of 2017).

For Appellant : Mr.J.Aadhil
for Mr.I.Abrar Md Abdullah

For Respondent : Served – No Appearance



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JUDGMENT

The appellant before this Court is the plaintiff in O.S.No.351 of 2019 on the file of the Principal District Court, Namakkal. The defendant is the husband of the plaintiff. The suit was originally filed as an indigent person in P.O.P.No.37 of 2017, which later, after giving permission to the petitioner to sue as an indigent person, was converted into a suit bearing O.S.No.351 of 2019 by the Principal District Judge, Namakkal.

2. It is the case of the plaintiff that she and the defendant got married on 20.04.2009. After the marriage, the defendant had fallen into bad habits and ultimately, deserted the plaintiff. The plaintiff would contend that she is residing in her parental home for the past four years and is unable to maintain herself. On the contrary, the defendant is running a business in the name and style of “Saravana Medicals and General Stores” at Chithalandur and also carrying on



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agricultural operations thereby earning a sizeable income. On 26.01.2017, she had approached the defendant with the assistance of Panchayatdars to give her maintenance. However, the defendant denied to give the maintenance and also refused to live with the plaintiff. Therefore, the plaintiff has come forward with this suit seeking maintenance of a sum of Rs.20,00,000/- with the charge on the “A” schedule property.

3. Though the defendant was served, he had not entered appearance and was called absent and set *ex-parte*.

4. The learned Principal District Munsif had framed the following points of consideration in the first appeal:

1. Whether the plaintiff is entitled to maintenance as claimed for?



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2. Whether the plaintiff is entitle to pay Court Fees after the Court had permitting the suit as the indigent person?

5. P.W.1 had examined herself and marked exhibits A1 and A2.

The learned District Judge had partly allowed the suit and rejected the claim of the plaintiff for the maintenance of Rs.20,00,000/- stating that the plaintiff has not proved her contention that the defendant was running a medical store and carrying on agricultural operations. The Court below had held that Ex.A1-Patta would clearly indicate that the plaintiff is not a joint owner of the “A” schedule property, since the owner names are shown as Thangavel, Kuppayee and Chinnappan. P.W.1 would state that the said Thangavel is the father of the defendant and therefore, the defendant has a 1/3rd share in the suit property. Considering the fact that the property did not stand in the name of the



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defendant and as the property in question belongs to the paternal grandmother of the defendant, thereby being a female property, the learned District Judge has held that the defendant will not have a share in the suit property, as it is the absolute property of the Hindu women.

6. The Court has also observed that the plaintiff has not pleaded as to why she should be granted the maintenance of such a huge sum of Rs.20,00,000/- The Court below observed that the plaintiff had failed to prove the income of the defendant. However, since the defendant is the husband of the plaintiff, he is duty bound to maintain her and the Court below had proceeded to award a monthly maintenance of Rs.1,000/- to the plaintiff. The suit was dismissed with regard to the relief of creating a charge over the property. However, while partly decreeing the suit, the learned District Judge had directed the plaintiff to pay the Court fees on the sum of Rs.20,00,000/- and the decree had been forwarded to the District Collector, Namakkal to recover the



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Court fees. Aggrieved by the judgement and decree, the plaintiff has come forward with this appeal.

7. Heard the argument of Mr.J.Aadhil, learned counsel appearing for the appellant/plaintiff. It is his contention that the plaintiff has proved that the defendant's family owns the ancestral property as evidenced by Ex.A1, however the trial Court has failed to take note of the same. He would submit that the defendant, by not appearing before the Court, has tacitly accepted the case of the plaintiff and therefore, the Court below ought to have decreed the suit as prayed for. Further, after permitting the plaintiff to sue as an indigent person and decreeing the suit partly in and by which the Court below had directed the defendant to pay the monthly maintenance of Rs.1,000/-, the Court below has erred in directing the plaintiff to pay the court fees on the suit claim of Rs. 20,00,000/-. Therefore, he sought to have the judgment and decree of the Court below set aside.



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8. The substantial questions of law that have raised for consideration in the above second appeal are:

1. Whether the plaintiff is entitled to the maintenance as claimed for?

2. Whether the plaintiff is entitled to pay the court Fees after the Court had permitted her to sue as an indigent person?.

9. The plaintiff has come forward to claim a monthly maintenance of Rs.20,00,000/- on the premise that the defendant is owning and running the medical stores apart from carrying on agricultural operations. There is no proof let in by the plaintiff to show that the defendant is owning and running the medical stores. Further, she has contended that the defendant owns the agricultural lands in proof of which Ex.A1 has been filed. The learned District Judge has



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considered Ex.A1 at length and held that the property in question is the property of the defendant's paternal grandmother, though pattas stand in the name of the defendant's father, defendant's paternal grandmother, and Chinnappan. Therefore, it is crystal clear that neither the defendant nor his father are the owners of the property in question, and in the absence of any proof, the courts below have rightly rejected the plea of the plaintiff and held that she is entitled to the maintenance of Rs.20,00,000/-. Taking into consideration her basic needs, the court below has ordered a monthly maintenance of Rs.1,000/-, which appears to be reasonable, and I see no reason to interfere with that finding. Therefore, the first point of consideration is answered against the plaintiff.

10. The learned District Judge had ordered P.O.P.No.37 of 2017 after obtaining the report about the plaintiff's indigent circumstances. There is nothing to show that the plaintiff's indigent circumstance has



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since improved. On the contrary, the Court below had directed the defendant to pay a meagre sum of Rs.1,000/- per month towards her maintenance as she does not have the wherewithal to take care of herself. That being the case, the direction to pay the Court fees on Rs.20,00,000/- is totally erroneous and without any basis. That apart, the same is onerous. Therefore, the second point of consideration is answered in favour of the appellant.

11. Consequently, the first appeal is partly allowed. The decree in O.S.No.351 of 2019 in so far as it directed the plaintiff to pay the court fees on the sum of Rs.20,00,000/- is set aside. Therefore, there shall be no order to costs.

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Index: Yes/No
Speaking order/non-speaking order
srn

9/11



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1. The Principal District Court, Namakkal.
2. The Section Officer,
V.R.Section,
High Court, Madras.



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P.T.ASHA, J.,

srn

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