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A.S.No.384 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

A.S.No.384 of 2017
and
C.M.P.No.14372 of 2017

S.Rethinapandian

... Appellant

Vs.

1.Smt.Kamala

2.The State Express Transport Corporation Limited,
Chennai Represented by its Managing Director,
Pallavan Salai,
Chennai – 600 002.

... Respondents

Prayer: Appeal Suit is filed under Section 19 of the Family Court Act, to allow the appeal by setting aside the Partial decree and judgment dated 31.01.2017 made in O.S.No.2 of 2017 on the file of Family Court at Karaikal.

For Appellant : Mr.S.Neducheian

For R1 : Mr.S.P.Vijaya Ragavan

For R2 : No Appearance

: Mr.C.S.K.Sathish
[For State Transport Corporation
Trust Fund]



JUDGMENT

The Appeal Suit has been instituted against the judgment and decree dated 31.01.2017 passed in O.S.No.2 of 2017.

2. The appellant is the 1st defendant in the original Suit. The 1st respondent is the wife of the appellant, who instituted a Suit in O.S.No.38 of 2013 before the District Court at Karaikal, which was transferred to Family Court, Karaikal and re-numbered as O.S.No.2 of 2017. The Suit was filed seeking monthly maintenance of Rs.6000/- from the appellant / husband and also to pay the arrears of maintenance.

3. The plaintiff has stated that the marriage between the plaintiff and the 1st defendant was solemnised on 26.10.1983 at C.V.C. Thirumana Mandabam, Karaikal. They lived as husband and wife at Poraiyar and from and out of wedlock between them two children namely Manjula and Maheswaramoorhty were born. Their marital life went happily. The plaintiff went to her father's house for second delivery and thereafter, the 1st defendant / husband was not interested to take back the plaintiff and deserted her. The plaintiff made repeated requests and issued a notice



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thereafter. The 1st defendant / husband had developed an illicit intimacy with a woman and was living a wayward life. The 1st defendant continued his illicit relationship with Mariammal of Vizhidiyur with whom he has been living. From the year 1989 onwards, the 1st defendant / husband neglected and also refused to maintain the plaintiff and her children. The plaintiff is not having any other property or source of income to maintain herself and children. Even her father was aged about 90 years at the time of filing of the Suit and she has been working in a Temple as Sweeper and leading her livelihood. The 1st defendant was working as a Driver in the Tamil Nadu State Express Transport Corporation Limited, Chennai and had received substantial amount as his terminal and pensionary benefits. However, the 1st defendant has not paid any maintenance amount to the plaintiff or to her children. Thus, the plaintiff instituted a Suit for maintenance.

4. The 1st defendant filed a written statement denying the plaintiff averments. The 1st defendant had stated that the plaintiff was the wife of the 1st defendant 24 years back, but she is not the wife now. The plaintiff was deserted by the 1st defendant and thereafter, she started living with her



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parents' at Poovam Village of Kottucherry Commune. The efforts taken by the defendant to resume the matrimonial home went in vain. The Community people arranged a meeting for reconciliation between the spouses. However, the plaintiff refused to attend the meeting. The 1st defendant in his written statement had stated that he was willing to resume the matrimonial home but the plaintiff refused to join with the him. There was no relationship between the plaintiff and the 1st defendant for the past about 24 years. Two children born to the plaintiff and the 1st defendant were in the custody of plaintiff and the plaintiff did not allow the 1st defendant to see the children. She has suddenly filed a petition seeking maintenance after several years. It is stated that the plaintiff was working as an Anganwadi Teacher and earning a sum of Rs.10,000/- per month. Her daughter Manjula is working as a Teacher in Government School and getting a salary of Rs.35,000/- per month. Her son Maheswaramoorthy was also working as Turner and earning independently. Denying all the plaint averments the 1st defendant defended his case.



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5. Based on the pleading between the parties, the Trial Court framed the following issues:

1. *Whether it is possible to direct the D1 to pay monthly maintenance with interest on charge on the terminal benefits and pension payable by D2 to D1?*
2. *Whether the suit is maintainable?*
3. *To what other relief the plaintiff is entitled to?*

6. With the above issues, on the plaintiff side PW1 was examined and Ex.A1 to Ex.A8 were marked. On the defendant side DW1 and DW2 were examined and Ex.B1 to Ex.B3 were marked.

7. The issue No.1 was recasted by the Trial Court, which reads as under:

Whether the plaintiff is entitled to get maintenance, if so how much and whether the charge can be made over the terminal benefit and pension payable by D2 to D1?

8. With reference to issue Nos.1 and 2, whether it is necessary to direct the 1st defendant to pay monthly maintenance with interest on charge of the terminal benefits and pension payable by D2 to D1. The Trial Court



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considered the admitted fact that the marriage between the 1st defendant and the plaintiff was solemnised on 26.10.1983 at C.V.C. Thirumana Mandabam, Karaikal. It is further admitted between the parties that two children namely Manjula and Maheswaramoorthy were born to them. The plaintiff went to her father's house for delivery of second child and thereafter, not resumed the matrimonial home. The plaintiff had stated that the 1st defendant had extra marital relationship with one Mariammal and thereby he neglected to maintain the plaintiff. On the other hand the 1st defendant had stated that he was ready and willing to resume the matrimonial home but the plaintiff was not interested to continue the matrimonial relationship with the 1st defendant.

9. In the context of the above admitted fact, the Trial Court has found that the 1st defendant worked as a Driver in the Tamil Nadu State Express Transport Corporation Limited and was receiving a decent salary during the relevant point of time. He had not maintained his wife for the past about 26 years and also the two children, who were not having good relationship with the 1st defendant. Thus, it was proved that the 1st defendant had been neglecting and refusing to maintain the plaintiff and thereafter, the plaintiff



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had issued a legal notice Ex.A5 stating that her husband abandons her with two children. Pertinently from the Ex.B2, it was proved that the plaintiff was getting a sum of Rs.1500/- from deserted women scheme of the Government. She has been neglected by her husband. Therefore, the Trial Court arrived at a conclusion that the 1st defendant deserted the plaintiff and neglected to maintain her and two children. However, the allegation regarding the extra martial relationship with one Mariammal is not supported by any other evidence. Since the desertion of the plaintiff by the 1st defendant was proved before the Trial Court, the Trial Court considered the quantum of maintenance to be granted in favour of the plaintiff taking into consideration of the financial position of the 1st defendant. The deliberation of the Trial Court in this regard was with reference to the salary of the Driver working in the Tamil Nadu State Express Transport Corporation Limited. Further taking into consideration that the 1st defendant neglected the plaintiff for about 24 years and also her two children. The finding of the Trial Court that the pension cannot be attached may not be completely correct.

10. The legal principles are considered as follows:



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11. It is observed in *Cadogan v. Cadogan [(1977) 1 W.L.R 1041]* that “a wife claiming financial relief in divorce proceeding is not a “creditor” of her husband”.

12. The Honourable Supreme Court in the case of *Ramesh Chander Kaushal v. Veena Kaushal [(1978) 4 SCC 70 : AIR 1978 SC 1807]* held that an order directing payment of maintenance is a measure of social justice and specially enacted to protect women and children, and it falls within the sweep of Art.15 (3) of the Constitution of India and reinforced by Art.39.

13. In the case of *Chaturbhuj v. Sita Bai [2008 (1) KLT 41 (SC)]* it was held that the object of payment of maintenance was to prevent vagrancy and destitution.

14. In the case of *Badsha v. Urmila Badshah Godse [(2014) 1 SCC 188]* it was held that, while dealing with applications of destitute wife or helpless children, the court is dealing with the marginalised sections of the society. The purpose is to achieve “social justice,” which is the constitutional vision enshrined in the Preamble of the Constitution of India.



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It is the bounden duty of courts to advance the cause of social justice. While interpreting a statute, the court may not only take into consideration the purpose for which the statute was enacted, but also the mischief it seeks to suppress. If this interpretation is not accepted, it will amount to giving a premium to the husband for defrauding the wife.

15. In the case of *Shamina Farooqui v. Shahid Khan [(2015) 5 SCC 705 : AIR 2015 SC 2025]* it was declared that : the wife has an absolute right of maintenance and the husband is not absolved from his obligation to provide maintenance merely on his plea of financial constraints, so long as he is healthy, able-bodied and capable for his own support.

16. In the case of *Ivan Rathinam v. Milan Joseph [2018 (2) KLT 884]* held : the object behind directing a man to pay maintenance is to compel him to perform his moral obligation which he owes to the society in respect of his wife and children, so that they are not left beggared and destitute on the scrapheap of society, and driven to a life of vagrancy, immorality and crime for their sustenance.



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17. The Parliament, in its wisdom, to protect the neglected and impoverished women and children, has enacted several legislations, both personal and uniform, applicable to all cross-sections of the society, making it mandatory for a man to maintain his wife and children to alleviate destitution. If wives and children are treated as creditors falling within the exemption to Rule 124 of the Rules, it will render laws relating to payment of maintenance redundant. Such a suppressive interpretation cannot be permitted.

18. It is worthwhile to note that Parliament has enacted Section 39 in the Transfer of Property Act, 1882, giving a person who has the right to receive maintenance a charge over the property belonging to the person bound to maintain such person.

19. In the case of *Sunitha v. Ramesh* [2010 (3) KLT 501] has held that the relationship between the husband and wife, ward and guardian falls within the meaning of ‘fiduciary relationship.’

20. In another illuminating judgment, in the case of *Radha v. Deputy Tahsildar* [2015 (1) KLT 423], held that the obligation of a husband, who



has deserted his wife metamorphoses from a mere obligation into a legal obligation, and that the said right would have precedence over crown debt.

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21. In this context, this Court has to consider the scope of Section 60(1)(g) of the Code of Civil Procedure and the provisions of the Tamil Nadu Pension Rules and also Tamil Nadu State Transport Corporation Employees Pension Fund Trust Rules. The scheme of the pension and Family pension adopted by the State Express Transport Corporation Limited, in the State of Tamil Nadu is akin to that of the Tamil Nadu Pension Rules, 1978, which is already in force for several years. Broadly, similar principles are adopted except few changes based on service specification. The State Transport Corporation scheme is mainly a contributory pension scheme. State Express Transport Corporation and all the Transport Corporations across the State of Tamil Nadu are maintaining contributory pension scheme by broadly adopting the principles from the Tamil Nadu Pension Rules, 1978. Thus, it is necessary to consider these principles for the purpose of forming an opinion, whether the pension can be attached for the purpose of recovering maintenance amount to be paid to the wife or not.



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22. Section 60 of the Code of Civil Procedure stipulates “*Property liable to attachment and sale in execution of decree. Proviso to Section 60 indicated the particulars shall not be liable to such attachment or sale*”.

Sub Clause (g) to Section 60 reads as under:

“60. *Property liable to attachment and sale in execution of decree-*

(1).....

(a).....

(b).....

(c).....

(d).....

(e).....

(f).....

(g) *Stipends and gratuities allowed to pensioners of the Government [or of a local authority or of any other employer], or payable out of any service family pension fund notified in the Official Gazette by [the Central Government or the State Government] in this behalf, and political pensions;”*

23. The above Sub-Clause (g) enumerates stipends and gratuities allowed to the pensioners of the Government or of local authority or of any other employer are not attachable. In this context, stipends and gratuities cannot be designated as pension as a whole. Gratuity is a part of service benefit, which cannot be construed as pension as it is. Monthly pension consist of various benefits including Dearness Allowance, Medical Health Allowance, which are granted based on the last pay drawn of the employee



concerned with other welfare benefits if any granted to the employees.

Therefore, the first phrase of Sub-Clause (g) would not cover “Pension as a Whole”. Secondly, Sub-Clause (g) indicates family pension fund notified in the Official Gazette by the Central Government or the State Government in this behalf and political pensions.

24. In the present case, it is not the family pension, which is proposed to be attached and it is the pension of the 1st defendant, who served as Driver in the Tamil Nadu State Express Transport Corporation Limited. However, the Sub-Clause (g) indicates family pension fund notified in the Official Gazette. Therefore, the family pension notified in the Official Gazette by the Central Government and the State Government cannot be interpreted as pension of the individual, which is paid from and out of the pension fund. Therefore, the Golden Rule of Interpretation is to be adopted, so as to ensure that Sub-Clause (g) to Section 60 do not operate negatively, so as to deprive a legally wedded wife from getting maintenance from her husband by attaching the portion of pension being drawn by him.



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25. The very purpose and object of Section 60 (g) is to protect the life of the pensioner / family pensioner as enunciated under Article 21 of the Constitution of India. Nobody shall be deprived of his / her life and in this context, the Code of Civil Procedure contemplates that stipends and gratuities and family pension fund are not attachable. Therefore, the Right to Life under Article 21 of the Constitution of India is to be considered with reference to the livelihood of the wife, who is not having independent source of income and was depending on her husband for her livelihood.

26. Protection of Life, in this context, is the protection of life of the family, which includes husband, wife and children. Therefore, Courts have to adopt a pragmatic approach to ensure that the 'Life' under Article 21 of the Constitution of India is to be interpreted to cover the life of the family members i.e., husband, wife and children and in such circumstances, if the husband, who is the sole breadwinner of the family neglects his wife and children to maintain, then the Courts are empowered to attach the portion of the pension and pay directly to the wife to protect her livelihood, which is the Fundamental Right guaranteed under Article 21 of the Constitution of India.



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27. Mr.C.S.K.Sathish, learned counsel for the State Transport Corporation Trust Fund, while assisting the Court, brought to the notice of this Court about Section 11 of the Pension Act, 1871, wherein, exemption of pension from attachment was provided. However, the Pension Act, 1871 is inapplicable with reference to the case on hand and more so, Special Pension Schemes are constituted for the State Government employees and the Transport Corporation employees and thus, the provisions of the Pension Act, 1871 cannot be applied. Special Statutes and Rules would prevail over the General Law and the Pension Act, 1871 being the General Law cannot be applied, so as to deprive the dependent wife from getting maintenance from her husband, who is receiving pension from the Transport Corporation.

28. Let us now consider the scope of Tamil Nadu Pension Rules, 1978.

29. As far as the Tamil Nadu Pension Rules, 1978 is concerned, Rule 8 stipulates pension subject to future good conduct. Rule 8 (1)(a) states that



“Future good conduct shall be an implied condition of every grant of pension and its continuance under these rules”. Sub-Rule (1)(b) to Rule 8 indicates that “The pension sanctioning authority may by order in writing withhold or withdraw a pension or part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct”.

30. Non-maintenance of a legally wedded wife is a misconduct under the Conduct Rules. Neglecting the family and behaving unbecoming of a Public Servant or contracting for a second marriage during the life time of the first wife are misconducts under the Service Conduct Rules. No employee shall enter into a contract for second marriage during the life time of his first wife and without getting decree of divorce from the Competent Court of Law. When the first marriage is subsisting the Public Servants cannot contract for a second marriage, which is misconduct and thus, they are liable to be prosecuted under the Disciplinary Rules. Under those circumstances, disciplinary action can be taken even under Rule 8 of the Tamil Nadu Pension Rules, 1978 against the retired Public Servants and if the authorities found that the pensioners are neglecting his own wife or



minor children, then part of pension may be deducted and to be paid to the family in order to protect their livelihood, which is a Fundamental Right guaranteed under Article 21 of the Constitution of India. Therefore, it is not as if a pensioner can neglect his wife so casually and deprive her right to life and the minor children. In the present case, the children have now attained the age of majority and are living separately. Therefore, the appellant is duty bound to maintain his wife and in the event of failure, the authorities are bound to initiate appropriate action for maintaining good conduct and if necessary deduct part of the pension and pay it to the wife directly in order to protect her livelihood.

31. Though there is no specific provision akin to that of Rule 8 of the Tamil Nadu Pension Rules, 1978 in Tamil Nadu State Transport Employees Pension Fund Rules, all these pension schemes are to be read in the context of the protection of life. Right to life, if denied to a legally wedded wife, the Courts are empowered to order for maintenance and such maintenance ordered shall be recovered from the pension by issuing a direct attachment order on the pension enabling the Competent Authorities to recover the portion of pension amount as ordered and pay it directly to the wife.



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32. It is painful to record that several such maintenance orders are passed by the Civil Courts, Family Courts and other Competent Courts. In most of the circumstances, the husbands are not paying the maintenance properly, but they are promptly and punctually receiving their salary and pension on the last day of every english calendar month from the Government. When the employees and pensioners are punctually receiving their pension or salary from the employers, it is the duty of the Courts to ensure that right of maintenance is also recovered promptly and punctually from such payment and paid directly to the wife without any default and in the event of not adopting such a procedure for recovery of maintenance, Courts are failing in its duty to protect the spirit of right to life enunciated under Article 21 of the Constitution of India. It is the duty and the responsibility of the Courts not only to resolve the disputes relating to maintenance, but also to ensure that the maintenance so ordered is recovered and paid to the decree holder promptly, since the maintenance is for the livelihood.



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33. Reading of Section 60(1)(g) of Code of Civil Procedure, the provisions of the Tamil Nadu Pension Rules, 1978 and also the Tamil Nadu State Transport Corporation Employees Pension Fund Rules, this Court is of the considered opinion that there is no prohibition for attaching the portion of the pension for paying the monthly maintenance to the wife, who is the part of the family of the pensioner and therefore, it is to be construed that dividing the pension to the husband and wife cannot be strictly considered as a third party arrangement and it a family arrangement, which is not otherwise prohibited under Section 60(1)(g) of the Code of Civil Procedure or under the Pension Scheme Rules.

34. Thus, the observation of the Trial Court that the pension amount as per Section 60 of the Code of Civil Procedure cannot be attached is an erroneous interpretation of 60(1)(g) and thus, this Court is of the considered opinion that pension can be attached more specifically, in the present case, for protecting the livelihood of the wife, who is also part of the family and the pension scheme as whole was constituted for the benefit and welfare of the family and not only for the benefit of the employee.



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35. The very concept of pension is to safe guard not only the interest of the retired employee, but also the interest of the family of the retired employees and that being the purpose and object of the pension scheme the finding of the Trial Court that the pension cannot be attached is unacceptable and more so it is directly in violative of Article 21 of the Constitution of India. Provision of law is to be interpreted practically and pragmatically to ensure that the Right to life which is a Fundamental Right is protected. Thus, the issue Nos.1 and 2 are answered in favour of the plaintiff / wife.

36. Regarding issue No.3, the Trial Court decreed the Suit in part directing the defendant to pay a sum of Rs.6000/- per month as maintenance to the plaintiff from the date of Suit and the same shall be paid on the 5th day of every English calendar month with cost. Though the Trial Court formed an opinion that the pension cannot be attached for payment of maintenance of Rs.6000/- per month to be paid to the plaintiff. In the present case, even after passing of the decree by the Trial Court, the appellant / 1st defendant has not even paid a rupee to the plaintiff by way of monthly maintenance. The plaintiff, now aged about 62 years, who is



present before this Court contended that she is now working in a small Mariamman Temple at Karaikal and leading her life. She is taking food in the Temple, since the Temple is paying a sum of Rs.1000 per month, which would be insufficient to lead her life. Thus, the Trial Court rightly granted maintenance. However, it has erroneously made a finding with reference to issue Nos.1 and 2 that the pension cannot be recovered towards payment of maintenance to the wife.

37. Regarding the quantum of maintenance, the learned counsel for the appellant contended that the appellant / pensioner is receiving a sum of Rs.9743/- as monthly pension from the Tamil Nadu State Transport Corporation. The appellant, who is also present before this Court made a submission that as of now he is not living with the other woman Smt.Mariamman. This being the factum, this Court is inclined to reduce the monthly maintenance from Rs.6000/- to Rs.3000/- by considering the fact that the appellant is receiving the monthly pension amount of Rs.9743/-.

38. Accordingly, the 2nd respondent / Managing Director of the Tamil Nadu State Express Transport Corporation limited, Pallavan Salai, Chennai – 600 002 is directed to recover the monthly maintenance amount of



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Rs.3000/- from the monthly pension of the appellant and credit the said amount of Rs.3000/- in favour of the 1st respondent Smt.Kamala in her Bank Account in Canara Bank, No.38 Bharathiar Road, Karaikal, Poovam, Pondicherry – 609609, Account No:4071101000524; Branch Name: Poovam Branch; IFSC Code: CNRB0004071.

39. The maintenance amount shall be deducted on sanctioning of monthly pension and to be directly credited to the above said Bank Account of the 1st respondent / wife Smt.Kamala through RTGS or through any other procedure, which is being followed by the Transport Corporation for crediting pension to the retired employees.

40. Regarding arrears of maintenance, both the appellant and the 1st respondent agreed for a sum of Rs.2,00,000/- as one time settlement as full quit. The appellant today has paid a sum of Rs.1,00,000/- to the 1st respondent and undertakes to pay the balance amount of Rs.1,00,000/- within a period of four (4) months from the date of receipt of a copy of this judgment.



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41. With the above modifications, the Appeal Suit is decreed.

42. Accordingly, the judgment and decree dated 31.01.2017 passed in O.S.No.2 of 2017 stands modified to the extent ordered above and consequently, the Appeal Suit in A.S.No.384 of 2017 stands allowed-in-part. Connected Miscellaneous Petition is closed. However, there shall be no order as to costs.

27.02.2023

Jeni

Index : Yes

Speaking order

Neutral Citation : Yes

To

The Judge,
Family Court,
Karaikal.



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S.M.SUBRAMANIAM, J.

Jeni

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