



S.A(MD)No.584 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.10.2023

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

S.A(MD)No.584 of 2023

and

C.M.P(MD)No.13582 of 2023

Sermakani

... Appellant/Appellant/Defendant

Vs.

1.Jayalatha

2.Anuprabha

...Respondents/Respondents/Plaintiffs

(The 2nd respondent Minor Anuprabha
represented through her mother and
guardian 1st respondent herein)

PRAYER:- Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree passed by the Additional Subordinate Court, Tenkasi, dated 09.09.2022 made in A.S.No.142 of 2019, confirming the judgment and decree made in O.S.No.43 of 2017, dated 31.07.2019 on the file of the Principal District Munsif Court, Tenkasi.

For Appellant :Mr.D.Srinivasaragavan
For Respondents :Mr.Cleetus



S.A(MD)No.584 of 2023

WEB COPY

JUDGMENT

This second appeal is filed challenging the judgment and decree, dated 09.09.2022 made in A.S.No.142 of 2019 on the file of the Additional Subordinate Court, Tenkasi, confirming the judgment and decree, dated 31.07.2019, made in O.S.No.43 of 2017 on the file of the Principal District Munsif Court, Tenkasi.

2. The respondents as plaintiffs filed the suit against the appellant claiming maintenance at Rs.4,000/- each and also passing a charge decree in respect of the suit property. The case of the respondents is that the marriage between the appellant and the first respondent had taken place on 27.05.2001. Out of wedlock, the second respondent was born. Ever since the date of marriage, the appellant had been harassing the first respondent and committed cruelty against her. In fact, he had thrown the first respondent with the second respondent out of matrimonial home. The appellant tried to marry one Jeeva on 20.11.2016. But, by the timely intervention of the police, it was stopped. The appellant is not giving any financial assistance to the respondents for their living. The respondents found it very difficult to meet their daily needs. Appellant earns Rs.90,000/- per month. In the said circumstances, the aforesaid suit was filed.



S.A(MD)No.584 of 2023

3. In the written statement filed by the appellant, he did not dispute the relationship between the parties. However, he denied all the allegations made against him in the plaint. It is stated that the respondents have filed maintenance case claiming maintenance at Rs.20,000/- per month in a Judicial Magistrate's Court. They also filed a petition under the Protection of Women from Domestic Violence Act, 2005. He has been paying monthly maintenance to the respondents. He has been paying monthly loan dues and also insurance premium. The first respondent has not performed her duties as wife and therefore, the appellant filed the petition for divorce. Thus, he prayed for dismissal of the suit.

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

- “(i) Whether the plaintiffs are entitled for maintenance and charge decree as prayed for?; and
(ii) For what other relief and cost, the parties are entitled to?”*

5. During the course of trial, P.W.1 and D.W.1 were examined. Exs.A1 to A4 and Exs.B1 to B5 were marked.



S.A(MD)No.584 of 2023

6. On considering the oral and documentary evidence and the finding that the appellant had admitted to abide by the orders of the Court, that he receives monthly rent of Rs.3,000/- per month, the learned trial Judge decreed the suit directing the appellant to pay Rs.4,000/- each as monthly maintenance to the respondents and effected charge on the suit property.

7. On an appeal filed by the appellant in A.S.No.142 of 2019, the learned Appellate Judge had concurred with the views taken by the learned trial Judge and dismissed the appeal. Therefore, the appellant is before this Court by way of this second appeal.

8. The point arises for consideration in this second is that whether the appellant has made out any substantial question of law for admitting this second appeal or not?

9. Heard the learned counsel appearing for the parties and perused the materials available on record.

10. From the submissions of the learned counsel appearing for the parties, it is clear that it is not the only proceedings where the respondents claimed maintenance from the appellant. It is an admitted



S.A(MD)No.584 of 2023

case that a maintenance petition under Section 125 of Cr.P.C., was filed in M.C.No.01 of 2017 on the file of the Judicial Magistrate Court, Tenkasi and after contest, the learned Judicial Magistrate, Tenkasi, was pleased to direct the appellant to pay Rs.15,000/- each per month from 30.01.2017 till 31.12.2021 and thereafter, pay Rs.20,000/- each per month to the respondents 1 and 2.

11. It is informed that the appellant was directed to pay Rs. 25,00,000/- in D.V.C.No.5 of 2017 on the file of the Judicial Magistrate Court, Tenkasi. It is submitted by the learned counsel for the appellant that both the orders have been challenged before the appellate forum. It is right conferred on the wife and children to claim maintenance under both criminal and civil laws. Therefore, we cannot find fault with respondents 1 and 2, initiating proceedings before the civil and criminal Court, seeking maintenance. At worst, the appellant can only pray for reduction of maintenance awarded, taking into consideration the maintenance granted in other proceedings.

12. Be that as it may, coming to the facts of this case, from the judgments of the Courts below, it is evident that both the Courts below have considered the oral and documentary evidence in proper perspective and came to the conclusion that the respondents 1 and 2



S.A(MD)No.584 of 2023

are entitled for maintenance of Rs.4,000/- each per month. In fact, it could be seen from the observation made that, the appellant during the course of cross examination admitted that he was prepared to abide by the orders passed by the Court. He admitted that apart from his monthly salary, in his capacity as a Manager of a private firm, he is receiving Rs.3,000/- per month as rent. To top it all, he stated that he is ready to abide by the conditions to be imposed by the Court with regard to maintenance order. In the said circumstances, this Court finds that there is no reason to interfere with the factual findings recorded by the Courts below.

13. In Sir **Chunilal V. Mehta and Sons v. The Century Spinning Co. Ltd., 1962** reported in **AIR 1962 SC 1314**, the Hon'ble Supreme Court formulated what amounts to a substantial question of law, as follows:

1. Whether it is of general public importance (or)
2. Whether it directly and substantially affects the rights of parties **and if so,**
3. Whether it is **either** an open question (in the sense not finally settled by this Court or Privy Council or Federal Court) **(or)**
4. The question is not free from difficulty and calls for discussion of alternative views.



S.A(MD)No.584 of 2023

14. In the case before hand, the appellant has not made out any of the aforesaid grounds to formulate substantial question of law. There is no substantial question of law arises for consideration in this second appeal.

15. In this view of the matter, the judgment and decree, dated 09.09.2022, made in A.S.No.142 of 2019 on the file of the Additional Subordinate Court, Tenkasi, are confirmed and this Second Appeal is dismissed. No Costs. Consequently, connected miscalculations petition is closed.

10.10.2023

pm

Index:Yes/No

NCC:Yes/No

To,

- 1.The Additional Subordinate Court,
Tenkasi.
- 2.The Principal District Munsif Court,
Tenkasi.
- 3.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.A(MD)No.584 of 2023

G.CHANDRASEKHARAN, J.

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S.A(MD)No.584 of 2023

10.10.2023