



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Thursday, the Eighth day of June Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice N.SATHISH KUMAR

C.M.P. (MD).No.5606 of 2023
in
A.S. (MD).No.231 of 2022

1 JEYANTHI

2 RENGARAJAN

3 MINOR.RATHINTHARA

(NATURE GUARDIAN 1ST RESPONDENT) ... PETITIONERS 1 TO 3/
RESPONDENTS 1 TO 3/RESPONDENTS 1 TO 3

Vs

1 MANGALESWARAN, ...1ST RESPONDENT/PETITIONER/
APPELLANT

2 STATE THROUGH DISTRICT COLLECTOR,
PERIYAMILAKUPARAI,
TRICHIRAPPALLI CORPORATION,
TRICHIRAPPALLI. ... 2ND RESPONDENT/
4TH RESPONDENT/4TH RESPONDENT

Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to permit the petitioners withdraw the maintenance amount of Rs.1000000 pending Credit in E.P.No.282 of 2022 in O.S.NO.59 of 2017 on teh file of the direct the Honble II Additional District Judge, Tiruchirappalli forthwith and thus render justice.

Prayer in AS(MD). 231/ 2022 :

First Appeal filed Under Section 96 of Civil Procedure Code,to call for the records in pertaining to the order made in O.S.No.59 of 2017 on the file of the II Additioal District Judge,Tiruchirappalli dated 12-01-2022 set aside the same and allow this appeal and thus render justice.

ORDER : This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.A.MOHAN, Advocate for the petitioners and of M/S.R.RAMACHANDRAN, Advocate on behalf of the



Respondent No.1 and not appeared for the respondent No.2 in person or through by an advocate, the court made the following order:-

This application has been filed to permit the petitioners to withdraw the maintenance amount of Rs.10,00,000/- pending credit in E.P.No.282 of 2022 in O.S.No.59 of 2017 on the file of the II Additional District Judge, Tiruchirapalli forthwith.

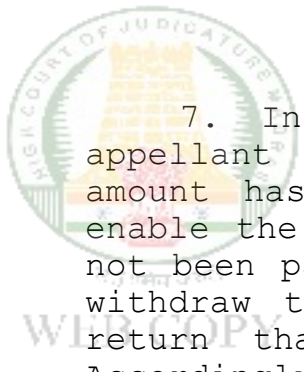
2. The wife and two minor children filed the suit in O.S.No.59 of 2017, *inter alia* contending that the appellant was negligent in paying the maintenance. Therefore, they sought a decree for maintenance.

3. The contention of the appellant before the trial Court is that the first plaintiff is having sufficient funds to maintain herself and she is an educated lady and the appellant has also paying the monthly maintenance, as per the order passed under the H.M.O.P. proceedings and contested the same. However, the trial Court on analysing the entire evidence, had granted a decree for a sum of Rs.21,00,000/- and Rs.5,000/- to the first plaintiff and Rs.5,000/- to the minor children till they attain majority. The total decree amount come around Rs.21,40,000/-. Aggrieved over the same, the present appeal has been filed, challenging the decree. While granting interim stay, this Court directed the appellant to deposit a sum of Rs.10,00,000/- and the same has been deposited and in order to withdraw the said amount, this application has been taken out by the petitioners/plaintiffs.

4. The learned counsel appearing for the appellant has disputed the paternity of the children and according to him, the children were not born to the appellant. Therefore, the petitioners are not entitled to maintenance.

5. At the outset, on perusal of the trial Court pleadings, particularly, the written statement filed by the appellant, this Court finds that such contention ever raised in the written statement. For the first time, in oral submission such contention is put forth.

6. It is relevant to note that when the appellant has failed to prove the non-access and there shall be a presumption that the child is born and it is in fact conclusive in nature, as far as the legitimate of the children is concerned, as per Section 112 of the Indian Evidence Act. Further, in this case, no such plea whatsoever raised in the entire written statement. Therefore, the contention of the appellant before this Court cannot be countenanced and the same has been made only to defeat the maintenance and even the written statement clearly indicate that he was separated only from the year 2007 and the marriage admittedly took place in the year 1999.



7. In such a view of the matter, the contention of the appellant cannot be countenanced and only 50% of the maintenance amount has been deposited. The object of the maintenance is to enable the parties to sustain their livelihood and the same has not been paid in this case. Hence, the petitioners are entitled to withdraw the said amount. Accordingly, the Executing Court shall return that amount with accrued interest to the petitioners. Accordingly, this petition is allowed.

8. Post the appeal for argument on **22.06.2023**.

sd/-
08/06/2023

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/06/2023

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

akv

TO

THE II ADDITIONAL DISTRICT JUDGE, TIRUCHIRAPPALLI

+1 CC to M/s.A.MOHAN, Advocate (SR-8356[I] dated 08/06/2023)

ORDER
IN
C.M.P. (MD) .No.5606 of 2023
in
A.S. (MD) .No.231 of 2022
Date :08/06/2023

RK/MMS/SAR- (13/06/2023) 3P/3C