



C.M.A. (MD) No.188 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 12.09.2023

PRONOUNCED ON : 25.09.2023

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND
THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

C.M.A(MD).No.188 of 2017

P.Rajeshwari

...Appellant

Vs

I.Ganeshan

...Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, to set aside the fair and final order of the Family Court, Trichy made in O.S.No.25 of 2015 dated 27.01.2017 and decree the O.S.No.25 of 2015 by allowing this Civil Miscellaneous Appeal.

For Appellant : Mr.K.K.Senthil

For Respondent : N.Marimuthu

For Mr.A.Chandrasekar



C.M.A. (MD) No.188 of 2017

J U D G M E N T

(Judgment of the Court was made by **R.VIJAYAKUMAR, J.**)

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The wife had filed O.S.No.25 of 2015 before the Family Court, Trichy seeking maintenance at the rate of Rs.5000/- per month from the date of plaint. The said suit was dismissed by the Family Court, Trichy on 27.01.2017. Challenging the same, the wife had filed CMA(MD).No.188 of 2017.

2.The couple got married on 07.02.1980 and they got separated in the year 1998. When the maintenance petition was filed, the son was undergoing Engineering Course and the daughter was studying in an Arts College.

3.The wife had filed the said maintenance suit alleging that the husband used to abuse her and the children and therefore, she was constrained to lodge a police complaint before the All Women Police Station, Cantonment, Trichy. According to her, the husband compromised the matter on the same day and took the wife and children back to the matrimonial home. Again the husband repeated the said ill treatment and the wife was forced to lodge a police complaint in September 2007. Though the police officials registered a case, later on the request of the husband, she had withdrawn the complaint. The husband had issued a divorce notice on 06.06.2008. The wife is not able to maintain herself and her children. The husband is a railway employee. Hence,



C.M.A. (MD) No.188 of 2017

she filed the said suit for maintenance.

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4.The respondent had filed a counter disputing the allegation relating ill treatment or his alcoholic behavior. The respondent had contended that he had spent money for the marriage of the daughter and had invested money for commencement of the business of his son. He had further contended that the wife is doing money lending business and enjoying all the movable and immovable properties of the husband.

5.The husband had further contended that the wife is more affluent and the husband is in financial crisis. He had further contended that the wife has got money to maintain herself and the allegation that she is in financial constrain is false.

6.Before the Family Court, the husband has marked Exhibits A10, B1 to B3 which are four sale deeds standing in the name of the wife. According to the husband, these properties were purchased out of his own income in the name of his wife. The Family Court found that the wife has not properly explained the source of income for purchasing these property. The Family Court further found that these properties have been purchased only by the husband in the name of the wife.



C.M.A. (MD) No.188 of 2017

7. Based upon the above said findings, the Family Court concluded that the wife is capable of maintaining herself and therefore, the claim for maintenance is not maintainable and dismissed the maintenance suit. Challenging the same, the present appeal has been filed by the wife.

8. According to the learned counsel appearing for the wife, the husband is duty bound to maintain the wife and he cannot shy away from his duty citing that some properties were standing in the name of the wife. He had further contended that the properties which are standing in the name of the wife have been mortgaged by the husband and several encumbrances have been created by him and therefore, there are no income from the said properties. The husband had never taken care to maintain the wife. He had further contended that whatever may be the financial status of the husband, he is duty bound to maintain the wife.

9. Per contra, the learned counsel appearing for the respondent/wife had contended that all the four properties have been purchased only from and out of the income of the husband in the name of the wife. According to him, he had proved the same by examining Sub Registrar of various officers as DW2 to DW4. Therefore, the wife is able to capable of maintaining herself and she is not entitled to get maintenance.



C.M.A. (MD) No.188 of 2017

10. We have given anxious consideration to the submissions made on either side and perused the material records.

11. The relationship between the parties and the fact that they got separated in the year 1998 are admitted. In the present case, the only defence of the husband for not paying the maintenance amount is that he had purchased four properties in the name of his wife and therefore, the wife is capable of maintaining herself.

12. A perusal of the documents would indicate that Exhibit A10, B1 to B3 stand in the name of the wife. Though the learned counsel for the wife had contended that the husband has created many encumbrance including the mortgages over the said properties, no encumbrance certificate has been placed on record to establish the same.

13. It is also not the case of the wife that she is not able to derive any income out of the property. The wife has not pleaded or placed on record anything about the valuation of four properties which are said to be in and around Trichy Town. As rightly pointed out by the Family Court, the wife has categorically admitted that she is not employed anywhere. Therefore, it is clear that all these properties have been purchased in the name of the wife from and out of the income of the husband. Therefore, we are of the considered opinion



C.M.A. (MD) No.188 of 2017

that the wife is capable of maintaining herself from and out of the income from these properties.

14.The Family Court had properly appreciated the oral and documentary evidence and has dismissed the suit. We do not find any merit in the appeal and this Civil Miscellaneous Appeal stands dismissed. However, if at any point of time in future, if the wife is not able to maintain herself, it is always open to her to file a maintenance petition under Section 125 of Cr.P.C which may be considered on merits and in accordance with law.

15.With the above said observations, this Civil Miscellaneous Appeal stands dismissed. No costs.

[A.S.M.J.] & [R.V.J.]

25 .09.2023

NCC : yes/no
Index :yes/no
Internet :yes/no
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C.M.A. (MD) No.188 of 2017

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- To
1. The Family Court, Tiruchirappalli
 2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A. (MD) No.188 of 2017

DR.ANITA SUMANTH, J.
AND
R.VIJAYAKUMAR, J.

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Pre-delivery Judgment made in
C.M.A(MD).No.188 of 2017

25.09.2023