



A.S.No.470 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **03.04.2024**

CORAM

THE HONOURABLE Ms. JUSTICE **P.T.ASHA**

A.S.No.470 of 2013

P.Latha

... Appellant

-Vs-

1.A.Mohandoss

2.The Assistant Executive Engineer,
Agricultural Engineering,
Komarasamipatti,
Salem-7.

... Respondents

PRAYER: First Appeal filed under Section 96 of the Code of Civil Procedure, 1908, to set aside the judgement and decree dated 07.01.2011 made in O.S.No.18 of 2007 on the file of the Family Court, Salem.

For appellant : Mr.M.Vivekanandan

For R1 : Mr.K.Poomalai

For R2 : Set *ex parte*
(vide order dated 05.07.2022)



A.S.No.470 of 2013

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JUDGMENT

The first defendant is the appellant before this Court, challenging the judgment and decree passed in O.S.No.18 of 2007 on the file of the Family Court, Salem.

2. The facts of the case are briefly set out hereinbelow and the parties, for the ease of understanding, are referred to in the same ranking as before the Trial Court.

PLAINTIFF'S CASE:

2.1. The plaintiff had filed the above suit for a declaration that the first defendant is not entitled to the maintenance amount of Rs.1,000/- per month as per the decree passed in F.C.O.P.No.229 of 1996 as she has remarried, and to restrain the second defendant from deducting the said sum from the plaintiff's salary.

2.2. It is the case of the plaintiff that by a compromise decree



A.S.No.470 of 2013

WEB COPY

dated 06.04.1998 in F.C.O.P.No.229 of 1996 on the file of the Family Court, Salem, the marriage between the plaintiff and the first defendant was dissolved. The terms of the compromise was that the plaintiff should pay a sum of Rs.1,000/- per month towards the maintenance of the first defendant. The compromise decree also contains a clause that in the event of the first defendant contracting the second marriage, then the obligation of the plaintiff to pay the monthly maintenance of Rs.1,000/- would stand undetermined. The plaintiff would submit that he has been paying the monthly maintenance to the first defendant by way of deduction from his monthly salary. The amounts have been directly deposited by the second defendant to the credit of the account of the first defendant.

2.3. The plaintiff would submit that in and around the year 1998, the first defendant had got married to one Pandian through whom a daughter viz., Nithyashree was born to them. However, totally suppressing the second marriage, the first defendant



A.S.No.470 of 2013

continued to receive the monthly maintenance. The plaintiff on coming to know about her second marriage, has filed this suit for the reliefs stated *supra*.

WRITTEN STATEMENT OF THE 1st DEFENDANT:

2.4. The first defendant would deny the allegation that she was married to one Pandian. She would also deny the fact that out of this wedlock, the daughter *viz.*, Nithyashree has been born to her. She would submit that the plaintiff has come forward with a totally false case to avoid paying her the monthly maintenance. It is also her challenge that if there is a second marriage, then the plaintiff would obtain the marriage certificate as well as the birth certificate from the hospital concerned. However, the plaintiff has not been able to produce any of these documents, but, simply produced the photocopies of the family card. Therefore, the first defendant would submit that there are no merits in the claim of the plaintiff and the suit deserves to be dismissed.



A.S.No.470 of 2013

WEB COPY

WRITTEN STATEMENT OF THE 2nd DEFENDANT:

2.5. The second defendant, who is the employer of the plaintiff, had filed a written statement stating that in compliance of the order passed in F.C.O.P.No.229 of 1996, he has been regularly deducting a sum of Rs.1,000/- from the plaintiff's salary every month and sending it directly to the first defendant.

TRIAL COURT:

3. The Trial Court had framed the following issues.

“(i)Whether the alleged 2nd marriage of the first defendant with one R.Pandian is true ?

(ii)Whether the plaintiff is entitled to the declaration and injunction as prayed for ?

(iii)To what relief ?”

4. To establish his case, the plaintiff has entered the box as P.W.1 and marked Exs.A1 to A7. The first defendant has examined



A.S.No.470 of 2013

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herself as D.W.1 and marked Exs.B1 to B4. The Village Administrative Officer, one M.Kari has been examined as Court witness - C.W.1.

5. The learned Judge, on considering the evidence on record, held that the first defendant was not entitled to continue to receive maintenance as she has ceased to have the right to claim maintenance as per the terms of the compromise. The Trial Court has also taken note of the blatantly false statements that the first defendant had uttered and also her conduct which clearly shows that she is trying to keep away the best evidence by not examining the said Pandian. That apart, the first defendant had gone to the extent of denying the maternity of her daughter. Ultimately, the learned Judge has allowed the suit.

6. Aggrieved by this judgment and decree, the first defendant is before this Court.



A.S.No.470 of 2013

WEB COPY

7. Heard the learned counsel on either side and perused the materials available on record.

8. After hearing the arguments of both the counsels, the following point is framed for determination.

“Whether the first defendant can continue to receive the maintenance as per the compromise decree in F.C.O.P.No.229 of 1996 as there is no marriage between the first defendant and the said Pandian?”

9. Mr.M.Vivekanandan, learned counsel appearing for the appellant/first defendant would submit that the plaintiff has not been able to establish the fact that the first defendant had married the said Pandian and without proving the factum of marriage, the plaintiff cannot stop paying the monthly maintenance to the first defendant. He would submit that the documents produced on the side of the



A.S.No.470 of 2013

plaintiff would also not prove the factum of marriage. The learned counsel would submit that at best, their relationship can be considered as only live-in relationship and therefore, the obligation of the plaintiff to pay her the monthly maintenance would continue. He would submit that the plaintiff had miserably failed to prove the factum that the first defendant is remarried and therefore, the plaintiff is entitled to pay the monthly maintenance to the first defendant.

10. Per contra, Mr.K.Poomalai, learned counsel appearing on behalf of the first respondent/plaintiff would submit that the plaintiff had produced the documents like birth certificate of the daughter, Nithyashree, the application for school admission, *etc.*, which would clearly and clinchingly prove the marriage between the first defendant and the said Pandian and which has also been taken note by the Trial Judge. He would submit that the documents filed on the side of the first defendant are self-serving documents and



A.S.No.470 of 2013

further, the first defendant has kept away the best evidence from the Court viz., Pandian. If there was no marriage between the two, she would have very well examined him as a witness on her side to dispel the contention of the plaintiff.

DISCUSSION:

11. A reading of Ex.A1-decree would indicate that as per clause 3 therein which reads as follows:

“ 3. எதிர்மனுதாரர் இரண்டாம் திருமணம் செய்துக் கொண்டால்
ஐுவனாம்சம் தொகை பெற அருகதையற்றவர் என ஒப்புக் கொள்கிறார்.”

the plaintiff was bound to pay the monthly maintenance to the first defendant till such time as the first defendant got remarried. It is also seen that the monthly maintenance has been regularly and directly paid by the second defendant who is the employer of the plaintiff, to the first defendant's account.

12. Ex.A4 is the letter dated 17.11.2009 given by



A.S.No.470 of 2013

WEB COPY

S.V.Vidyalaya Nursery and Primary School, Salem, in response to the plaintiff's request regarding the application for school admission.

A perusal of this application for admission would show that the student, P.Nithyashree was born on 09.08.2000 and her parents are described as Pandian and P.Latha (the first defendant herein). The application for admission would also have an endorsement that the original birth certificate has been verified and returned.

13. Ex.A6 is the letter dated 17.11.2009 issued by the Principal of St.Joseph Matriculation School, Salem, enclosing a copy of the birth certificate of the student, Nithyashree. A perusal of this birth certificate would show that the father's name is Pandian and the mother's name is P.Latha. The original certified copy of the birth certificate was also produced as Ex.A7. These documents have all been marked without any objection.

14. D.W.1, during her evidence, would submit that



A.S.No.470 of 2013

WEB COPY

Nithyashree is not her child. However, she has stated that her address is No.5/11A, Anna Nagar, Jagir Ammapalayam, Salem. It is the very same address which is reflected in the application for school admission of Nithyashree marked as Ex.A5. Therefore, it is crystal clear that the first defendant is uttering false statements. That apart, she has not chosen to examine the said Pandian to disprove the contention of the plaintiff and therefore, an adverse inference has to be drawn for the non-examination of Pandian. The document that she has produced ie., Ex.B1 appears to be a document created at her behest since on the very same date of application for admission, the Village Administrative Officer has issued a certificate to her that she is not remarried. Even in this certificate, her address was given as No.5/11A, Anna Nagar, Jagir Ammapalayam, Salem. Therefore, it is clear that the first defendant has remarried and through this marriage, a child has also been born to her, thereby, disentitling her to receive the maintenance of Rs.1,000/- per month.



A.S.No.470 of 2013

WEB COPY

15. That apart, the first defendant appears to be an untrustworthy witness who with no qualms, has denied the fact that the child Nithyashree was born to her, all of which, have been done only to continue to receive the maintenance. The birth certificate and school admission would clinchingly show that the first defendant is living with the said Pandian at the address given therein and through whom, the child Nithyashree has been born to her. Therefore, the point for determination is answered against the first defendant and I see no reason to interfere with the judgment and decree passed by the learned Judge, Family Court, Salem, in O.S.No.18 of 2007.

Accordingly, this first appeal stands dismissed. No costs.

03.04.2024

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order
ssa

To

1.The Judge, Family Court, Salem.



A.S.No.470 of 2013

2.The Section Officer, V.R.Section, High Court, Madras.

P.T.ASHA, J.,

ssa

A.S.No.470 of 2013

03.04.2024