



S.A.(MD) No.193 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.10.2024

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

S.A.(MD) No.193 of 2012

V.Muniasamy

.. Appellant/Appellant/
Defendant

Vs.

Karuppayee Devi

.. Respondent/Respondent/
Plaintiff

Prayer: Appeal filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 12.09.2011 made in A.S.No.6 of 2011 on the file of the Sub-Court, Aruppukottai confirming the judgment and decree dated 02.12.2010 in O.S.No.394 of 2004 on the file of the District Munsif Court, Aruppukottai.

For Appellant : Mr.V.Muniasamy
Party-in-person

For Respondent : Mr.Meenakshisundaram
for Mr.K.Seenuramachandran



S.A.(MD) No.193 of 2012

WEB COPY

JUDGMENT

The defendant, who suffered a concurrent judgment has moved this second appeal.

2. The parties are referred as per their ranking before the trial Court.

3. The plaintiff has filed O.S.No.394 of 2004 on the file of the District Munsif Court, Aruppukottai claiming maintenance of mere sum of Rs.1,000/- and charge decree over the suit schedule property in lieu of maintenance.

4. The case of the plaintiff is that she had married the defendant on 14.12.1997 according to the Hindu Rights and Customs. The defendant was none else than her own maternal uncle. Her parents had given her a sum of Rs.50,000/- and 25 sovereigns of jewellery as sridhana at the time of wedding. For about 21 years, the plaintiff and the defendant had lived



S.A.(MD) No.193 of 2012

a happy married life and two male children were born to them. The plaintiff would submit that initially the defendant was not having sufficient income and it was the plaintiff, who was managing the day-to-day maintenance of the house with the support of her parents. The defendant was serving in the Army at that point of time. It was the plaintiff and her parents, who had taken care of the children. The plaintiff's parents had given a vacant site at Pandiyan Nagar, Kariyapatti to the defendant for constructing a house. The defendant had also used the jewellery given as sridhana to the plaintiff to construct five other individual houses. The defendant is residing in one of the said houses and has let out the other houses for rent and is receiving income through the property. That apart, the defendant was receiving pension from the Army. It is then that the attitude took change and he started physically torturing the plaintiff and using abusive language.

5. The defendant had also filed H.M.O.P.No.13 of 2002 before the Sub-Court, Aruppukottai stating that the plaintiff was a mentally unsound. The plaintiff had in this proceedings clearly expressed her



S.A.(MD) No.193 of 2012

WEB COPY

intention to live with the plaintiff. Thereafter, the petition for divorce filed by the defendant was dismissed. In the said HMOP, the plaintiff had filed I.A.No.26 of 2002 for an interim maintenance of a sum of Rs. 15,000/-. The same was allowed. The defendant had also paid a sum of Rs.15,000/- ordered on 24.03.2003 and thereafter, he had not paid any amounts. The plaintiff would submit that all her attempts to rejoin the defendant had ended in failure and she was thrown out from the matrimonial house and she was returned to her parents' house and she has no income on her own. The defendant has been receiving income of Rs.1,00,000/- per year from the suit schedule property, Rs.2,500/- as pension per month and also Rs,3,000/- from his job. Therefore, she has filed the suit for maintenance.

6. The defendant had filed a written statement *inter alia* denying the allegations and stating that he had preferred an appeal in C.M.A.No. 10 of 2004 challenging the sum in H.M.O.P.No.13 of 2002 and the same is pending. Therefore, he would submit that the suit is premature. He has given 94.5 cents of nanja land in S.No.267/6 at Kambikudi Kilai



S.A.(MD) No.193 of 2012

Village on 24.05.1980 to the plaintiff in lieu of maintenance. He has also bought an extent of 58 cents of nanja lands in S.No.271/2 of the same village and other extent of 28 cents of nanja lands in S.No.271/4 both in the name of the plaintiff. Though the plaintiff has been given these properties and as her claim was only for maintenance, a sum was agreed by both the plaintiff and the defendant. Accordingly, the plaintiff agreed to receive the sum of Rs.15,000/- stating that she would not claim any further maintenance from the defendant and on this agreement, the interlocutory application was disposed of. The defendant would submit that the plaintiff has no affection for her children and she is also receiving an annual income of Rs.30,000/- from the land owned by her. It was the plaintiff who deserted the defendant and her sons and is living happily at her rich parents' house. Therefore, she is not entitled to maintenance.

7. The trial Court framed the following issues:

“1. Whether the plaintiff is entitled to claim maintenance of Rs.1000/- p.m from the defendant as prayed for?”



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- 2. Whether the plaintiff is entitled to get charge decree in respect of the suit property as prayed for?*
- 3. To what other reliefs?”*

8. The plaintiff had examined herself as P.W.1 and marked Ex.A.1 to Ex.A.4 in support of her case. The defendant had neither entered the witness box to submit himself for cross examination nor marked any documents on his side. Ultimately, on considering the evidence on record and the conduct of the defendant, the suit was decreed as prayed for. Challenging the same, the defendant had filed A.S.No.6 of 2011 on the file of the Sub Court, Aruppukottai. The Sub-Judge framed the following questions for consideration and ultimately, dismissed the suit, as against which the above second appeal has been filed:

- “1. Whether respondent is a lunatic person?*
- 2. Whether the lower court case filed by the respondent is valid as per law?*
- 3. Whether the lower court decree and judgment is correct in the eye of law?”*



S.A.(MD) No.193 of 2012

WEB COPY

9. The defendant, who contested the appeal as a party in person would submit that the filing of the suit during the pendency of the petition for divorce would premature. He would also submit that the plaintiff is guilty of suppressing the true facts. He would submit that she has deliberately suppressed the earlier decree for divorce granted in the year 1998. That apart, he would submit that the Courts below have not considered the order in the Civil Miscellaneous Appeal and by which C.M.A.No.10 of 2004, the defendant was granted a decree for divorce. He would rely on the judgment of the Hon'ble Supreme Court in *Abdul Gafur and another vs. State of Uttarkhand and others* reported in *(2008) 10 SCC 97* in support of his contention that even at the appellate stage, if there is lack of jurisdiction, the appellate Court viz., the High Court would take the proceedings on to its file and pass orders thereon. He would therefore submit that the judgments of both the Courts have to be set aside.

10. Per contra, Mr.V.Meenakshi Sundaram, learned counsel



S.A.(MD) No.193 of 2012

WEB COPY

appearing for the respondent would submit that the issue of jurisdiction has to be raised at the first instance viz., before the trial Court itself. He would draw the attention of this Court to paragraph 6 of the written statement where the defendant has raised the plea that the suit was not maintainable when the appeal in C.M.A.No.10 of 2004 was pending. However, he has not sought to have the same raised as an issue. He has not questioned the issues that had been framed. That apart, it is the contention of the learned counsel that the defendant has not entered the witness box to submit himself for cross examination and not a single document has been filed by the appellant. This was also observed by the trial Court. An application for receiving additional document was filed before the trial Court, which was also rejected. Therefore, he would submit that there is no infirmity in the decree of the Courts below and the same may be dismissed.

11. The second appeal has not been admitted. The defendant's argument is two fold: (a) The District Munsif had no jurisdiction to entertain the suit in O.S.No.394 of 2004 since the suit was framed as the



S.A.(MD) No.193 of 2012

divorce petition was pending; and (b) The plaintiff suffers from a mental ailment; (c) The defendant who has paid the rest, the said issue of jurisdiction in the Court at first instance cannot seek to raise it at this stage in the proceedings viz., during the pendency of the second appeal. That apart, the defendant has not raised the question of jurisdiction as issue and has also not questioned the non-framing of the issue by the trial Court.

12. His consistent stand was that since the petition for divorce is pending, the suit was not maintainable. To substantiate the same, he has not filed any document, which has also been extracted by the Courts below. Further, the Court has noted the conduct of the defendant during the proceedings of the trial, which has been set out extensively in paragraph 9 of the judgment. It is the plaintiff herself, who had adduced evidence and marked documents and her demeanour has been noticed by the Courts below. That part, the defendant's application seeking for appointment of a guardian had been rejected as against which there had been no appeal/revision. Therefore, the contentions that the plaintiff is



S.A.(MD) No.193 of 2012

WEB COPY

mentally challenged cannot be countenanced. The defendant has not made out any question of law much less substantial question of law. Therefore, the second appeal stands dismissed. It is also brought to the notice of this Court that not a single penny has been paid to date by the defendant. It is well open to the plaintiff to recover the same in the manner known to law. No costs.

25.10.2024

NCC : Yes/No

Index : Yes/No

Internet : Yes

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To

1.The Sub-Judge,
Aruppukottai.

2.The District Munsif,
Aruppukottai.



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S.A.(MD) No.193 of 2012

P.T.ASHA, J.

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S.A.(MD) No.193 of 2012

Dated: 25.10.2024
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