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SA(MD)No.278 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 26/07/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

SA(MD)No.278 of 2024
and
CMP(MD)No.7093 of 2024

Selvaraj : Appellant/Petitioner

Vs.

Krishnammal : Respondent/Respondent

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree, dated 06/11/2023 made in AS No.17 of 2023 on the file of the Additional District Judge (FTC), Tenkasi, modifying the decree against the judgment and decree, dated 24/11/2022 made in OS No.3 of 2020 on the file of the Sub Court, Sankarankovil.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondent : Mr.M.Thirunavukkarasu

JUDGMENT

This second appeal is filed against the judgment and decree, dated 06/11/2023 passed in AS No.17 of 2023 by the Additional District Judge, Tenkasi, modifying the decree and judgment, dated 24/11/2022 passed in OS No.3 of 2020 by the Sub Court, Sankarankovil.



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2. Pleadings before the trial court in brief:-

The defendant is the plaintiff's elder son who is working as Joint Commissioner Officer in the Indian Military and earning not less Rs.1,00,000/- per month. Ramasamy Nayakker who is the husband of the plaintiff and father of the defendant died in 1996. The defendant filed a suit in OS No.156 of 2017 before the III Additional District Court, Tirunelveli over the family properties and it is kept pending. The plaintiff aged about 70 years. She is not in a position to maintain herself. She has no permanent income for the past 8 years. The defendant abandoned the plaintiff without taking care. The younger son of the plaintiff namely Vairamuthu Kumar is paying Rs.5,000/- as monthly maintenance to the plaintiff. He is also taking care of her comfort, food, health, etc.. Even though he is earning meagre income, in spite of that he is maintaining the plaintiff by paying Rs.5,000/-. The plaintiff is suffering from various health ailments. A complaint was given by the plaintiff to the higher official of the defendant on 26/08/2019. In spite of the complaint, the defendant did not come forward to pay the money. A legal notice was issued on 31/10/2019. In spite of the steps taken, no maintenance amount was paid. Hence, the suit.



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3.The defendant filed written statement stating that after the death of his father, he was taking care of the family and also maintaining the plaintiff. He was sending money regularly to the plaintiff. The plaintiff purchased a house plot in 1998-1999 in Reddiyarpatti village and another house plot on 16/09/2021 measuring about 10 cents. Since the defendant was working in the Indian Army, he was not able to visit the village frequently. Only out of the money of the defendant, the properties were purchased. More-over, two houses were built by him out of his own savings and income bearing Door Nos.4/107D and 4/107E. The plaintiff was residing in that house. Out of the savings, the plaintiff had Rs.5,00,000/- and earning income by doing money lending business. Only because of the plaintiff's financial position, she told the defendant that he need not send money. The defendant was also willing to take the plaintiff along with him. But the plaintiff was not willing. Without the knowledge of the defendant, the plaintiff settled the house properties in favour of her younger son Vairamuthu Kumar. The defendant is always ready and willing to maintain her mother.

4.Before the trial court, on the side of the plaintiff, one witness was examined and 8 documents



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marked. On the side of the defendant, one witness was examined and no document was marked.

5.The trial court framed the following the issues:-

(1)Whether the defendant is liable to pay Rs.10,000/- towards monthly maintenance to the plaintiff?

(2)Whether the plaintiff is entitled to the relief as prayed for?

(3)What other reliefs, the plaintiff is entitled to?

6.At the conclusion of the trial process, the trial court directed the appellant herein to pay a sum of Rs.10,000/- per month as prayed for by the plaintiff in the plaint without costs.

7.Against which, appeal was preferred in AS No.17 of 2023 before the Additional District Judge, Tenkasi. The appellate court reduced the amount of maintenance amount to Rs.5,000/- per month from the date of the plaint.

8.Against which, this second appeal is preferred by the defendant as appellant.



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9.Heard both sides.

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10.At the time of admission, the learned counsel appearing for the appellant would submit that the issue is between the mother and the son. So the matter may be referred to the mediation centre for settlement. On that account, notice was ordered to the respondent. The matter was referred to the mediation, but it could not be settled due to difference of opinion between the parties.

11.In the grounds of appeal, four substantial questions of law are mentioned. Since there was no settlement between the parties, the parties were heard on the point of admission itself without framing the substantial question of law.

12.The learned counsel appearing for the appellant would fairly submit that now he is in service. After retirement, it may not be possible for him to pay the monthly maintenance of Rs.5,000/-, since his financial capacity to pay Rs.5,000/- is now normal, it may not be possible tomorrow. But whether such a plea can be accepted is the only point to be decided. Absolutely no substantial question of law is necessary in this matter. It is the duty of the son to maintain the mother. The



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respondent got two childrens. One among is the appellant and another son is paying proper maintenance to the respondent.

13.Per contra, the learned counsel appearing for the respondent would submit that the trial court ordered to pay Rs.10,000/- as monthly maintenance, but the appellate court reduced the amount to Rs.5,000/- per month. Even though Rs.5,000/- is disputed by the appellant stating the financial position in future, such contention is not tenable. With regard to the property issue, it appears that the suit in OS No.156 of 2017 is pending before the III Additional District Court, Tirunelveli, which may not be relevant here. The respondent is aged about 70 at the time of filing the suit. Now 4 years lapse, she would be running around 75 today. At this advanced age, now she is defending the second appeal. Considering the age of the respondent, the appellant must realize his responsibility, more particularly to maintain the respondent. The issue with regard to the house property has to be worked out in the pending matters. Absolutely, it has no connection to the right of maintenance claimed by the respondent herein. Even though, the learned counsel appearing for the respondent would submit that both sons were provided with one house each and the



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respondent is under his care and custody of one of the sons, those are absolutely not relevant here.

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14.The learned counsel appearing for the appellant further submit that the respondent is having house property and living there. But there is no evidence that she is deriving income from that house property. Owning house is not sufficient to deny the legal maintenance. So none of the grounds mentioned in the appeal are worth considering. Absolutely, no substantial question of law is involved in this matter as noted above. The appellate court has rightly come to the conclusion, by taking into account the payment of Rs.5,000/- provided by another son by name Vairamuthu Kumar. The request made by the appellant a provision may be made in the judgment itself for payment of future maintenance is also out of place and cannot be accepted. On sufficient cause, the parties are at liberty to move the trial court for modification of the maintenance amount. Such a right is always available to the parties, which is like that right available to a party.

15.So the second appeal itself is devoid of any merits even for admission. The appeal fails and the same is **dismissed** with costs. The respondent is entitled for



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cost throughout even though the cost was not ordered by the trial court and the appellate court. Consequently, connected Miscellaneous Petition is closed.

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Index:Yes/No
Internet:Yes/No
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To,

- 1.The Additional District Judge,
Tenkasi.
- 2.The Sub Judge,
Sankarankovil,
Tenkasi District.
- 3.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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G. ILANGO VAN, J

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