



A.S.(MD)No.231 of 2022 and Cross Obj(MD)No.19 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 01.08.2024

PRONOUNCED ON: 27.11.2024

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

**A.S.(MD)No.231 of 2022 and
Cross.Obj(MD)No.19 of 2024 and
C.M.P.(MD)No.10100 of 2022**

A.S.(MD)No.231 of 2022:

Mangaleswaran

...Appellant

Vs.

1.Jeyanthi
2.Rengarajan
3.Rathinthara

(3rd respondent is declared as major and the Guardianship of his mother R1-Jeyanthi is discharged vide Court order, dated 01.08.2024, made in CMP(MD)Nos.9694 and 9695 of 2024 in AS(MD)No.231 of 2022)

4.State through District Collector,
Periyamikaluparai,
Trichirappalli Corporation,
Trichirappalli.

...Respondents



A.S.(MD)No.231 of 2022 and Cross Obj(MD)No.19 of 2024

PRAYER: This Appeal Suit filed under Section 96 of C.P.C., against the decree and judgment, dated 12.01.2022, made in O.S.No.59 of 2017 on the file of the II Additional District Judge, Tiruchirappalli.

For Appellant : Mr.R.Ramachandran
For R1 to R3 : Mr.A.Mohan
For R4 : Mr.P.T.Thiraviam
Government Advocate

Cross Obj.(MD)No.19 of 2024:

- 1.Jeyanthi
- 2.Rengarajan
- 3.Rathinthara

... Cross Appellants

(3rd cross objector is declared as major and the Guardianship of his mother 1st cross objector -Jeyanthi is discharged vide Court order, dated 01.08.2024, made in CMP(MD)Nos.9697 and 9699 of 2024 in Cross Obj(MD)No.19 of 2024)

Vs.

- 1.Mangaleswaran
- 2.State through District Collector,
Periyamikaluparai,
Trichirappalli Corporation,
Trichirappalli.

...Respondents

PRAYER: This Cross Objection filed under Order XLI Rule 22 of C.P.C., against the decree and judgment, dated 12.01.2022, made in O.S.No.59 of 2017 on the file of the II Additional District Judge, Tiruchirappalli.



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For Cross Appellants : Mr.A.Mohan
For R1 : Mr.R.Ramachandran
For R2 : Mr.P.T.Thiraviam
Government Advocate

COMMON JUDGMENT

The present Appeal Suit is preferred by the 1st defendant / husband in the suit against the decree and judgment dated 12.01.2022, passed in O.S.No.59 of 2017 on the file of the II Additional District Judge, Tiruchirappalli.

2. The cross objections is filed by the 1st plaintiff / wife, 2nd and 3rd plaintiffs / children against the decree and judgment dated 12.01.2022, passed in O.S.No.59 of 2017 on the file of the II Additional District Judge, Tiruchirappalli

3. The plaintiffs 1 to 3 are the respondents 1 to 3 herein. The 1st defendant is the appellant herein, the 2nd defendant is the 4th respondent herein. For the sake of convenience, the parties are referred as plaintiff and defendants as per the ranking in the suit.

4. The suit is filed for maintenance claiming arrears for the past maintenance to



the tune of Rs.11,10,000/- and future maintenance for 1st plaintiff to the tune of Rs. 10,000/- monthly and for the 2nd and 3rd plaintiffs to the tune of Rs.10,000/- each until they attain majority and other expenses. The 1st plaintiff is the wife of the 1st defendant and their marriage was solemnized on 05.02.1999. The 1st plaintiff / wife used to perform the marital obligations with utmost affection and cordiality and never be at logger heads with the 1st defendant/husband on the family matters at any point of time. But right from the date of recruitment as lecturer in the Department of Social Work at Bharathidasan University, Trichy in the year 1999, the 1st defendant was highly reluctant to look after the 1st plaintiff and family without any reasonable and justifiable and spurn all just demands, further return home at midnight and avoided taking meals at home and behaved in eccentric and erratic manner and was swayed by misconceived notions. In the third week of December, 2005, the 1st defendant saw off the plaintiffs at railway station and he was feigned to be enthusiastic. Soon after the plaintiffs returned to their home on 31.12.2005, the defendant hurled various unfounded, scurrilous, disparaging, defamatory, unparliamentary and slanderous allegations against the 1st plaintiff and assassinated the character and conduct of the 1st plaintiff. The father of 1st defendant probed the behaviour of the 1st defendant and brought to the light startling fact that the 1st



defendant was engrossed in immoral and illicit intimacy with a girl student namely, Vanitha Bharathi, daughter of Aruchamy of Coimbatore and such illicit relationship happened while the said lady was studying M.A., Social Works during 2004 in Bharathidasan University. The 1st defendant's father took out extracts from mobile phone office and these extracts clinchingly establish the facts as to the perpetuation of illicit intimacy with the said Vanitha Bharathi. The 1st defendant admitted his illicit intimacy before his parents and beseeched them to send out the plaintiffs and permit him to bring Vanitha Bharathi. At the refusal of his parents to accommodate his paramour in their house, the defendant had become totally crest fallen and he idled away his time in the University itself. Then in February, 2006, the 1st defendant left his house with bags and baggage and was staying in Room No.12 Ram Mansion. The repeated appeals by the plaintiffs, 1st defendant's parents and close relatives for restoration of conjugal rights failed to evoke any positive response. Hence, the 1st defendant had wantonly deserted the plaintiffs and neglected to maintain them and audaciously sticking to his paramour Vanitha Bharathi without any justifiable cause. Hence on 06.04.2006 the father of the 1st plaintiff had presented petitions before Tmt. Fatima Vasanth, the Principal and Mr.Vijayaraman, M.Phil Guide of Vanitha Bharathi placing all facts of illicit intimacy by the 1st defendant. Enraged by that, the 1st



defendant instigated the said Vanitha Bharathi and she presented a false and baseless criminal report against the father of the 1st defendant before the Commissioner of Police, Coimbatore City Corporation but she failed in her efforts to achieve her object. Since the 1st defendant could not remove the plaintiff from the house at Shanmuga Nagar, the 1st defendant gate crashed into his house on 12.09.2009 at 06.15 PM and snatched gold neck chain weighing 10 sovereigns equivalent to 80 grams from the 1st plaintiff, leaving his motor bike in the premises of his house. But stiff resistance put up by the 1st plaintiff and the mother of the defendant which ended in fracture of mother's left forearm. One T.Joshna @ Joseph Vijay Gas Appliances and Services who is the classmate of the 1st defendant in the St. Joseph College was fully aware of the illicit affair of the 1st defendant with Vanitha Bharathi, took effort for the restitution of conjugal rights between the plaintiffs and the 1st defendant but the same was in vain. One professor Dr. Gnanaprakasam in Physics Department of St. Joseph College offered maximum counselling to the 1st defendant against perpetuating illicit intimacy but the same was also hay wire. One Subash Chandira Bose, Head of the Department of Tamil, the Bishop Heber College and guide to the 1st defendant, Professor Dr.Prasanth and Dhakshinamoorthi Lecturer of Social Works Department in Bharathidasan University also tried but all went in vain. The 1st



defendant openly and flagrantly perpetuating his illegal intimacy with Vanitha Bharathi acting in glove with one Sethu Ramanlingam, Head of the Department of Social Works in Bharathidasan University, neglected the plaintiffs. The plaintiffs do not have means for livelihood. They have been pulling on their lives with pittance doled out by the 1st defendant's parents adding more ordeals to the 1st defendant. The 1st defendant laid divorce petition against the 1st plaintiff in HMOP.No.72 of 2007 on the file of Principal Sub Court, Trichy, seeking dissolution of marriage on unfounded false and baseless grounds. At the same time, having deliberately, wantonly, suppressed, the illegal intimacy with Vanitha Bharathi. The 1st defendant is drawing a salary of Rs.60,000/- per month. Therefore, he is liable to pay maintenance to the 1st defendant wife and the minor sons, i.e., 2nd and 3rd plaintiffs. Hence, the suit is filed claiming maintenance.

5. The 1st defendant had filed a written statement wherein he had that the plaintiff had suppressed the material facts regarding her race, the family status, her education, the previous proceedings in which an interlocutory application filed by the 1st plaintiff and on behalf of other plaintiffs. In the said I.A. the Sub Court directed to pay Rs.3,000/- and the till date, the 1st defendant is paying the same



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through bank demand draft. The 1st plaintiff is an educated person who is capable of earning and in fact, she is employed as a Teacher in a Private School and is drawing a handsome salary. The 1st plaintiff is living with the father-in-law and mother-in-law at Srinivasanagar and the said property was agreed to be parted to the 1st plaintiff alone. Infact, right from the date of separation to till date, for more than 8 years, the 1st plaintiff along with the children are residing in the same house and no rent is being collected as the parents of the defendant has neglected their own son and the basic needs are fulfilled by one way or other and the same is suppressed by the 1st plaintiff. The 1st plaintiff is the daughter of a reputed advocate practicing in Manaparai and Trichy District Court and other Sub Courts. The 1st plaintiff has got both movable and immovable properties worth Rs.2 Crores/- for which documentary proofs are submitted. Infact, the 1st defendant has presented 15 sovereigns of gold at the time of marriage and the same is worth to the tune of Rs.3,70,000/- and is still lying with the plaintiff. The plaintiff is a Graduate, employed in Tiny Tots School at Trichy and is earning Rs.15,000/- per month as salary. Apart from the support from her parents and her in-laws, there are other dwelling houses in Trichy as well as in the native of the plaintiff's father. She also has ancestral properties from which the plaintiff is drawing income of Rs.10,000/- per month. In toto, a sum of Rs.20,000/-



as monthly income is earned by the 1st plaintiff besides the recurring amount or Rs. 3,000/- as maintenance which is paid without any default from the date of filing HMOP. Hence, the 1st plaintiff had lied and she is not an indigent person. For the past 10 years, the 1st plaintiff is separated from the 1st defendant and she has not claimed any money from the 1st defendant which means that she is capable of maintaining herself including the dwelling house which is the ancestral property of the 1st defendant. The education of the minor children is important and the Government Schools are very well established which does not require any fees but the 1st defendant is ready to pay Rs.6,000/- for the minor children only and the 1st defendant prays that the rest of the 1st plaintiff's claim may be dismissed. The 1st plaintiff had not come out with clean hands by not disclosing all the movables and immovables received by her through Bank. Hence, the suit filed as indigent is not tenable and the 1st defendant prayed to dismiss the suit with cost.

6. After hearing the rival claims, the Trial Court has formulated the following issues:

1. Whether the 1st plaintiff is liable to pay Rs.11,10,000/- for past maintenance?



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2. Whether the 1st defendant is liable to pay the maintenance of Rs. 10,000/- to the 1st plaintiff?

3. Whether the 1st defendant is liable to pay Rs.10,000/- each for 2nd and 3rd defendants until they attain majority

4. And to what further reliefs?

7. The Trial Court has allowed the suit and directed the 1st defendant to pay Rs. 15,000/- from November 2008 to December 2011 to the plaintiffs 1 to 3 as past maintenance from the date of filing the petition, the 1st plaintiff is entitled to Rs. 5,000/-, the 2nd plaintiff is entitled to Rs.5,000/- until his majority and the 3rd plaintiff is entitled to Rs.5,000 until he attains major. Aggrieved over the same, the present appeal suit is preferred by the 1st defendant / husband.

8. The 1st plaintiff had filed a cross objection stating that the 1st plaintiff is earning only Rs.8,900/-. Therefore, the maintenance of Rs.5,000/- is a meagre amount and considering the cost of living and the status of the 1st plaintiff, the Court ought to have fixed Rs.10,000/- as monthly maintenance. Further, the wife is entitled to 25% of the net salary of the husband as per the judgment of the Hon'ble Supreme



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Court in the case of ***Dr.Kulbhushan Kumar Vs. Rajkumari and another*** reported in ***(1970) 3 SCC 129***. As a father of the plaintiffs 2 and 3, the 1st defendant is liable to bare the entire educational expense of the children. Further, the 1st defendant was earning more than Rs.60,000/- (as in the year 2012). Therefore, the 1st defendant is liable to pay Rs.10,000/- and the same ought to be increased periodically based on the cost of living. On the above grounds, the present cross objection is filed.

9. Pending suit, the 2nd plaintiff had attained majority. Hence, the Court had held that he is entitled to past maintenance until the date of majority. Pending the appeal suit, the 3rd plaintiff has also attained majority on 11.11.2022. Hence, the petition to discharge the 1st plaintiff as guardian was allowed on 01.08.2024.

10. The points for consideration are as follows:

- a. Whether the 1st plaintiff is entitled to maintenance when she is having capacity to earn, more so when she is employed at private school?
- b. Whether the 2nd and 3rd plaintiffs are entitled to maintenance until their majority?



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- c. As per cross objections, whether the plaintiffs are entitled to increased amount?
- d. To what other reliefs?

11. The wife is entitled to maintenance, if the wife is not able to maintain herself. Further the burden is on the husband to prove that the wife has sufficient means to maintain herself. The Hon'ble Supreme Court in the case of *Rajathi vs. C. Ganesh* reported in **1999 (6) SCC 326** has held that the statement of the wife that she is unable to maintain herself is sufficient to grant maintenance and the relevant portion is extracted hereunder:

“In the present case wife alleged that her husband had contracted a second marriage on January 4, 1990. She filed a complaint for an offence under [Section 494](#) of the Indian Penal Code. It is stated that the complaint was dismissed and husband was acquitted. High Court took this circumstance against the wife and adversely commented on her refusal to live with her husband. High Court, it would appear, lost sight of the fact how it would be difficult for the wife to prove the second marriage. This Court has held that to prove the second marriage as a fact essential ceremonies constituting it must be proved and if second marriage is not proved to have been validly performed by observing essential ceremonies and customs in the community conviction under [Section 494](#) IPC ought not to be made. The fact, however;



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remains in the present case that the husband is living with another woman.

*Proviso to sub-section (3) would squarely apply and justify refusal of the wife to live with her husband. There can be, however, other grounds for the wife to refuse to live with her husband, e.g., if she is subjected to cruelty by him. It was a case where the husband neglected or refused to maintain his wife. High Court did not consider the question if husband was having sufficient means. It rather unnecessarily put the burden on the wife to prove that she was unable to maintain herself. The words "unable to maintain herself" would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after the desertion to survive somehow. Section 125 is enacted on the premise that it is obligation of the husband to maintain his wife, children and parents. It will, therefore, be for him to show that he has no sufficient means to discharge his obligation and that he did not neglect or refuse to maintain them or any one of them. High Court also observed that the wife did not plead as to since when she was living separately. This is not quite a relevant consideration. Even though wife was unable to prove that husband has remarried, yet the fact remained that the husband was living with another woman. That would entitle the wife to live separately and would amount to neglect or refusal by the husband to maintain her. **Statement of the wife that she is unable to maintain herself would be enough and it would be for the husband to prove otherwise.**"*

In the above case it has been held that the statement of the wife is sufficient and it would be for the husband to prove otherwise. In the present case the contention of



the defendant / husband is that the wife is employed and hence she is able to maintain herself. Further the wife is living in the house belong to the husband parents and she is not paying rent for the same. And also submitted that the wife is being supported by the wife's parents and also the husband's parents. This Court is of the considered opinion that this contention of the husband that the parents of both the husband and wife are supporting the wife and the children monetarily is sufficient to prove that the husband has completely discarded from his duty and neglected to maintain the wife and the two children. Further it is seen that the divorce petition is still pending between the husband and wife. Therefore, the wife is entitled to maintenance and the children are entitled to maintenance until their majority.

12. The next contention of the husband that the wife is earning sufficiently. But the contention of the wife is that she is employed in a private school and earning only Rs.8,900/- and the same is not sufficient to maintain herself and the two children. This Court is of the considered opinion that even though the husband contended that the wife is employed, the husband had not produced any evidence to indicate the earnings of the wife. When the wife had filed cross objections and had stated that her earning is only Rs.8,900/-, further there is no contra evidence by the



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husband, this Court is of the considered opinion the earnings of the wife is not sufficient to maintain the wife and the two children.

13. Since the husband is employed as professor in the Bharathidasan University, the husband is having capacity to maintain the wife and the children. Therefore, all the plaintiffs are entitled to maintenance. The 1st plaintiff wife is entitled to Rs.10,000/- from November 2008. The two children are entitled to Rs. 7500- each per month from November 2008 until their majority. The plaintiffs are entitled to the cost of litigations to the tune of Rs.1,00,000/-.

14. With the above said directions, the appeal suit is dismissed and the cross objection is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

27.11.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes

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To

- 1.District Collector,
Periyamikaluparai,
Trichirappalli Corporation,
Trichirappalli.
- 2.II Additional District Judge,
Tiruchirappalli.
- 3.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.,

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