



S.A.(MD)No.31 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 08.07.2024

PRONOUNCED ON: 02.08.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

**S.A.(MD)No.31 of 2018
and
C.M.P.(MD)No.562 of 2018**

Kanakaraj : Appellant/Appellant/
Defendant

Vs.

1.Jancy
2.Minor.Herlin Jacksy
3.Minor.Headlin Jose
(Minor Respondents 2 and 3 are
represented by guardian mother /
1st respondent) : Respondents/Respondents/
Plaintiffs

PRAYER:- Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree passed A.S.No.67 of 2014, dated 11.01.2017, on the file of the Subordinate Judge, Padmanabhapuram, confirming the judgment and decree passed in



S.A.(MD)No.31 of 2018

O.S.No.216 of 2012, dated 10.09.2014, on the file of the Additional District Munsif, Padmanabhapuram.

For Appellant : Mr.K.P.Narayana Kumar

For Respondents :Mr.C.Kishore
for R.1.

(R.2 and R.3 represented by R.1 mother)

JUDGMENT

The Second Appeal is directed against the judgment and decree passed in A.S.No.67 of 2014, dated 11.01.2017, on the file of the Subordinate Court, Padmanabhapuram confirming the judgment and decree made in O.S.No.216 of 2012, dated 10.09.2014, on the file of the Additional District Munsif Court, Padmanabhapuram.

2. The appellant is the defendant. The first respondent for herself and on behalf of her minor children – respondents 2 and 3 have laid the suit for maintenance. Admittedly, the first respondent is wife and the respondents 2 and 3 are the children of the appellant/defendant. The appellant contested the suit by filing the written statement. The learned



S.A.(MD)No.31 of 2018

WEB COPY

District Munsif, after framing necessary issues and after full trial, has passed the judgment and decree dated 10.09.2014 granting a decree directing the appellant/defendant to pay Rs.2,000/- per month to the first respondent/first plaintiff till her life time or till her second marriage and Rs.1,000/- per month to the second respondent/second plaintiff till her marriage and Rs.1,000/- per month to the third respondent/third plaintiff till his attaining majority and also creating a charge over the suit property for the due payment of the maintenance amount. Aggrieved by the said judgment and decree, the defendant has preferred an appeal in A.S.No.67 of 2014 and the learned Subordinate Judge, Padmanabhapuram, upon considering the materials available on record and on hearing the arguments of both sides, has passed the impugned judgment and decree dated 11.01.2017, dismissing the appeal and thereby confirming the judgment and decree of the trial Court. Challenging the dismissal of the appeal, the present Second Appeal came to be filed by the defendant.

3. Though the Second Appeal is pending from 2018 onwards, the same is not yet admitted and hence, the Substantial Question of Law was not formulated.



S.A.(MD)No.31 of 2018

WEB COPY

4. Heard the learned Counsel for the appellant and the learned Senior Counsel appearing for the respondents.

5. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in their original suit.

6. Before entering into further discussion, it is necessary to refer the mandate of the Hon'ble Supreme Court for High Courts in deciding the Second Appeals under Section 100 of the Civil Procedure Code, in the case of ***Gurnam Singh (dead) by LRs., and others Vs. Lehna Singh (dead) by LRs.***, reported in ***AIR 2019 SC 1441***, that the jurisdiction of the High Court in an appeal under Section 100 of the Code of Civil Procedure is directly confined to the case involving substantial question of law and the relevant passage is extracted hereunder:

“18. Before parting with the present judgment, we remind the High Courts that the jurisdiction of the High Court, in an appeal under Section 100 of the CPC, is strictly confined to the case involving substantial question of law and while deciding the *second appeal under Section 100 of the CPC*, it is not permissible for the High Court to re-appreciate the evidence on record and interfere with the findings recorded



S.A.(MD)No.31 of 2018

WEB COPY

by the Courts below and/or the First Appellate Court and if the First Appellate Court has exercised its discretion in a judicial manner, its decision cannot be recorded as suffering from an error either of law or of procedure requiring interference in Second Appeal. We have noticed and even as repeatedly observed by this Court and even in the case of [Narayanan Rajendran v. Lekshmy Sarojini](#), (2009) 5 SCC 264, despite the catena of decisions of this Court and even the mandate under [Section 100](#) of the CPC, the High Courts under [Section 100](#) CPC are disturbing the concurrent findings of facts and/or even the findings recorded by the First Appellate Court, either without formulating the substantial question of law or on framing erroneous substantial question of law.”

7. Bearing the above legal position in mind, let us proceed with the present case.

8. As usual in the matrimonial proceedings, the first plaintiff as well as the defendant have raised allegations and counter allegations against each other. It is not in dispute that their marriage was held on 05.08.2009 as per the rites and customs of the Christian community and



S.A.(MD)No.31 of 2018

WEB COPY

due to their wedlock, the second plaintiff was born on 16.06.2010 and the third plaintiff was born on 13.10.2011. It is also not in dispute that the first plaintiff and the defendant are living separately from 07.09.2012. The case of the plaintiffs is that after leading happy life for a brief period, the defendant started demanding additional dowry, that since the first plaintiff has given birth to a female child, the defendant has abused her and informed that she will not be allowed in the matrimonial home, if she fails to bring additional dowry of Rs.1,00,000/-, that the family elders of the first plaintiff intervened and took her to matrimonial house, that the defendant went to the extent of disputing the paternity of the second plaintiff, that the defendant used to come to the house during late hours in drunken mood and used to assault and harass the first plaintiff, that the first plaintiff's in-laws and the defendant's sister who resides nearby used to instigate the defendant for all his commissions and omissions, that the first plaintiff has tolerated all those cruelties, considering the interest of her children, that the defendant had forcibly taken away all the ornaments of the first plaintiff and also spent the entire sridhana amount, that the defendant has failed to maintain the plaintiffs from 01.06.2012 onwards and that on 07.09.2012 evening, the defendant severely assaulted the first plaintiff demanding additional dowry of Rs.1,00,000/- and drove her out



S.A.(MD)No.31 of 2018

WEB COPY

of the matrimonial house and that the first plaintiff along with her children are living in her parents house and they are taking care of them.

9. It is the further case of the plaintiffs that the defendant is a skilled mason and he worked in abroad on two occasions, that the defendant has been earning more than Rs.15,000/- per month and also gets Rs.3,500/- per month as income from his properties, that the first plaintiff is unemployed and has no other source of income of her own and that therefore, the plaintiffs were constrained to file the above maintenance suit.

10. The defendant has filed a written statement disputing the plaintiffs' averments except their marriage and the paternity of the plaintiffs 2 and 3.

11. The defence of the defendant is that the first plaintiff's parents are not having any means and they were in pathetic condition at the time of their marriage, that the first plaintiff's family members are all belonging to communist party and they used to behave with the defendant in an agitative commanding manner for all the matters, that



S.A.(MD)No.31 of 2018

WEB COPY

the defendant alone spent for marriage and delivery expenses of the first plaintiff, that the defendant has never assaulted and harassed the first plaintiff at any point of time, but on the other hand, the first plaintiff alone used to torture the defendant, that on 07.09.2012 at about 11.00p.m., on the plaintiff's direction, 30 men gang including the first plaintiff's three brothers and uncles came to the defendant's home, assaulted him and called the Thuckalay police, that the police has come and arrested the defendant and kept him under the illegal custody, that the gang has robbed all the belongings of the defendant including the jewels and other properties, certificates and etc., that the first plaintiff has filed the above suit only to harass the defendant and to escape from the illegal activities shown against the defendant and that therefore, the plaintiffs are not entitled to any relief.

12. In the written statement, the defendant has admitted that he has filed a petition in I.D.O.P.No.427 of 2012 for dissolution of marriage between himself and the first plaintiff. However, the learned Counsel for the plaintiffs would submit that the same was also dismissed. It is not in dispute that the first plaintiff has lodged a complaint on 08.09.2012 under Ex.A.3 and on receipt of the same, Ex.A.4 came to be issued and



S.A.(MD)No.31 of 2018

WEB COPY

that a criminal case came to be registered against him. It is also not in dispute that the first defendant was arrested and was released on bail.

13. No doubt, as rightly pointed out by the learned Counsel for the appellant/defendant, the defendant has lodged a complaint before the Superintendent of Police, Kanayakumari and on that basis, F.I.R., came to be registered in Cr.No.615 of 2013 against the first plaintiff and others. No doubt, the defendant, pending proceedings, has taken a stand that he was ready and willing to live with the plaintiffs. But as rightly contended by the learned Counsel for the plaintiffs, such a plea was not at all raised in the written statement. Even according to the defendant, he has already filed a divorce O.P., and the same was pending. More importantly, the defendant has taken a stand that the divorce petition came to be filed without his knowledge, but such a plea was not raised in the written statement. Hence, the above contention of the defendant that the divorce petition was filed without his knowledge is very hard to believe.

14. As rightly pointed out by the learned trial Judge, the defendant has not taken any steps to withdraw the divorce petition nor filed any



S.A.(MD)No.31 of 2018

petition for restitution of conjugal rights. Considering the evidence available on record, the trial Court has come to a decision that the first plaintiff was thrown out of the matrimonial home on 07.09.2012 by the defendant and that the first plaintiff has not voluntarily left the matrimonial home and that therefore, the first plaintiff cannot be found fault with for living separately.

15. It is not in dispute that the defendant went abroad and worked in two spells. It is also not in dispute that he is working as a mason and even according to him, he was getting Rs.400/- per day, but his witness D.W.2 would say that the mason's wages is Rs.600/- per day. But now-a-days, the masons are getting more than Rs.1,000/-per day. Hence, the finding of the trial Court fixing the daily income of the defendant at Rs.500/- cannot be considered as excessive and unreasonable. The defendant, as an after thought, has taken a stand that the first plaintiff is well educated woman with a qualification of computer teachers training course and is getting sufficient income to support herself. But admittedly, the defendant has not taken such a stand in the written statement nor adduced any evidence. The defendant has not given any particulars about the first plaintiff's employment and her income.



S.A.(MD)No.31 of 2018

WEB COPY

16. Considering the income of the defendant and taking note of the then cost of living, the trial Court has fixed the monthly maintenance at Rs.2000/- per month for the first plaintiff and Rs.1,000/- each for the plaintiffs 2 and 3, as confirmed by the appellate Court are very much reasonable. In the present scenerio, the amount awarded is very much on lower side. Considering the above, the Courts below have rightly granted the decree for maintenance in favour of the plaintiffs.

17. It is pertinent to note that the appellant has not shown that any material evidence was ignored by the first appellate Court or that there was no evidence at all. It is not their case that any wrong inference had been drawn by the first appellate Court from the proved facts by applying the law erroneously. On perusal of the judgments of the Courts below and as rightly contended by the learned Counsel for the respondents/plaintiffs, no question much less Substantial Question of Law is made out. Hence, this Court concludes that since no Substantial Question of Law is made out in the Second Appeal, the same is liable to be dismissed.



S.A.(MD)No.31 of 2018

WEB COPY

18. In the result, the Second Appeal is dismissed, confirming the concurrent judgments made in O.S.No.216 of 2012, dated 10.09.2014, on the file of the Additional District Munsif Court, Padmanabhapuram and made in A.S.No.67 of 2014, dated 11.01.2017 on the file of the Subordinate Court, Padmanabhapuram. Consequently, the connected Miscellaneous Petition is also dismissed. There shall be no order as to costs.

02.08.2024

NCC : Yes:No
Index : Yes : No
Internet : Yes : No
SSL

To

1. The Additional District Munsif Court, Padmanabhapuram.
2. The Subordinate Court, Padmanabhapuram.
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A.(MD)No.31 of 2018

K.MURALI SHANKAR,J.

SSL

PRE-DELIVERY JUDGMENT MADE IN

S.A.(MD)No.31 of 2018

02.08.2024