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A.S.No. 623 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20-06-2025

CORAM

**THE HONOURABLE MRS JUSTICE J. NISHA BANU
AND
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN**

A.S. No. 623 of 2025

Mohana

W/o. Ganapathy, D/o. Seerangarajan,
D.No.10/289, Villaikottai, Neikarapatti,
Salem Dt.

Appellant(s)

Vs

Ganapathy

S/o. Kandasamy @ Muniya Gounder,
D.No.Chinnagiri Village and Post,
Thalayur, Salem Taluk, Salem.

Respondent(s)

PRAYER: The Appeal Suit is filed under Section 19(1) of the Family Court Act
r/w Section 96 of Civil Procedure Code against the judgement and decree dated
09.01.2025 in O.S. No.24 of 2020 on the file of the Family Court, Salem.

For Appellant(s): Mr.R.Nalliyappan



JUDGMENT

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(Judgment of the Court was delivered by **J.NISHA BANU, J.**)

This Appeal Suit has been filed as against the judgment and decree dated 09.01.2025 in O.S.No.24 of 2020 on the file of the Family Court, Salem.

2. The facts in brief necessary for the disposal of this appeal are as follows:-

2.1. The plaintiff is the appellant herein and the defendant is the respondent herein. The averment in the plaint is that the marriage between the plaintiff and the defendant was solemnized on 31.10.1988 at Attayampatty. After the marriage, the defendant never took care of the plaintiff and deserted her life.

2.2. The defendant married another woman and living with her and therefore, the plaintiff filed F.C.O.P No.35 of 1999 for divorce on the ground of desertion.

2.3. F.C.O.P.No.35 of 1999 was allowed on 29.04.1999 and even after divorce, the plaintiff has not married and living separately.



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2.4. According to the plaintiff, the defendant agreed to give maintenance to the plaintiff but he has not paid the maintenance and the plaintiff has no income for maintaining herself and she is residing with her parents for the past 25 years and she is not capable of maintaining herself and further, her father also died subsequently.

2.5. On 01.03.2020, the plaintiff came to know that the defendant making arrangements to alienate the property to 3rd parties and if he is allowed to alienate the property, it would be very difficult for the plaintiff to realize the amount from the defendant. Therefore, the plaintiff has filed the suit for maintenance amount due to the plaintiff and to restrain the defendant by way of permanent injunction in any way alienating or encumbering the suit property.

3. The defendant had filed a Written Statement refuting the averments made in the plaint and stated that the plaintiff and the defendant got divorce vide F.C.O.P No.35 of 1999 for the main reason that the plaintiff had illicit contact with one Thangaraj. Apart from that, the plaintiff filed a maintenance application vide M.C.No.9 of 1992 and the said application was dismissed noting that the plaintiff is living adulterous life with the said Thangaraj. According to the defendant, the plaintiff is still living only with the said Thangaraj as husband and wife and only to squeeze money and property from



the defendant, she filed the suit after a lapse of 22 years and therefore, prayed for the dismissal of the suit.

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4. The Trial Court, relying upon Section 125(4) C.P.C, held that the wife shall not be entitled for maintenance if she is living in adultery. Further, held that the defendant had already proved that the plaintiff is living adulterous life with one Thangaraj during the proceedings of M.C. No.9 of 1992 and accordingly, the said maintenance case was dismissed. The learned Judge, Trial Court observed that the plaintiff filed Divorce Case vide F.C.O.P No.35 of 1999 and got divorce decree on 29.04.1999 and the suit for maintenance has been filed after a lapse of 20 years after the date of divorce and holding so, dismissed the suit. Against which, the plaintiff is before this Court with the instant appeal.

5. The learned counsel for the appellant/ petitioner submits that the appellant, being a divorced wife with no independent source of income, is legally entitled to claim maintenance under the law. The Trial Court failed to appreciate this fundamental right and erroneously, dismissed her claim for past and future maintenance.

6. He would further contend that the Trial Court's finding that the appellant was leading an adulterous life with one Thangaraj is based on mere allegations without any cogent evidence. Such a finding is perverse and



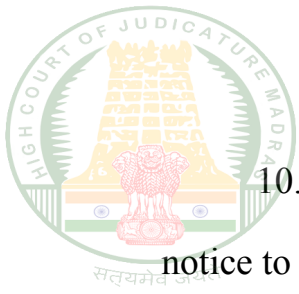
unsustainable in law, as unproven allegations cannot be grounds to deny maintenance.

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7. The learned counsel for appellant would further submit that the right to claim future maintenance is a continuing cause of action and is not barred by limitation. The Trial Court had failed to correctly apply this principle, leading to an unjust denial of the appellant's claim. The learned counsel for appellant/petitioner submits that the Trial Court failed to consider the legal effect of the dismissal of M.C. No. 9 of 1992, which occurred prior to the divorce decree dated 29.04.1999. Such dismissal cannot operate as res judicata or estoppel against a fresh civil claim for maintenance post-divorce.

8. The learned counsel for the appellant / petitioner submits that the Trial Court dismissed the prayer for permanent injunction without assigning proper reasoning or analyzing the necessity of such relief to protect the appellant's interests in the suit property.

9. The learned counsel for appellant would further submit that the Family Court failed to properly consider the burden of proof required to substantiate allegations of adultery against the appellant. Unproven allegations cannot be treated as sufficient grounds to deny maintenance without strict legal proof.



10. Since no adverse order is going to be passed against the respondent, notice to the respondent is dispensed with.

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11. Heard the learned counsel for the appellant/ petitioner and perused the entire materials available on record.

12. This Court, upon a thorough examination of the records and the reasoning of the Trial court, finds no infirmity in the conclusions reached. The lower Court had dismissed the plaintiff's claim for past and future maintenance, as well as ancillary reliefs, on the ground that the plaintiff failed to establish her entitlement to such reliefs, particularly in the light of the dissolution of the marriage and findings of adulterous conduct.

13. The Trial Court pointed out that the plaintiff and defendant were divorced by a decree dated 29.04.1999 (Ex.A4), which conclusively severed their marital ties. The plaintiff has filed the suit nearly two decades after the divorce with an attempt to revive claims that were neither legally sustainable nor factually substantiated.

14. This Court concurs with the view of the learned Judge of the Trial Court. We find that the plaintiff did not provide any valid justification for the inordinate delay in seeking maintenance after the dissolution of the marriage. Further, the Trial Court had relied on the dismissal of an earlier maintenance petition (M.C.No. 9 of 1992, Ex.B1), where the plaintiff was found to be leading an adulterous life with one Thangaraj. This Court finds no reason to



disbelieve this finding, as the plaintiff did not challenge the order in Ex.B1 nor offer any rebuttal to the defendant's allegations in the present proceedings. The absence of any explanation from the plaintiff regarding the earlier maintenance case only strengthens the conclusion that her conduct disentitled her to relief.

15. We also find that the Trial Court had rightly rejected the plaintiff's prayer for creating a charge over the suit property and for a permanent injunction, as these reliefs were contingent upon her establishing a valid claim for maintenance. Since the foundational claim for maintenance itself failed, the ancillary reliefs could not be granted. This court affirms this reasoning as legally sound and consistent with settled principles.

16. In view of the foregoing reasons, we do not find any grounds that warrants interference by this Court.

17. In the result, the Appeal Suit stands dismissed. No costs.

(J. NISHA BANU, J.) (M. JOTHIRAMAN, J.)

20-06-2025

ASI

To

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