



A.S.(MD)No.92 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
10.09.2025	17.09.2025

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

A.S.(MD)No.92 of 2018
and
C.M.P.(MD)No.9713 of 2018

Vellaya Pillai

... Appellant / Plaintiff

vs.

Mangaleshwari

... Respondent / Defendant

PRAYER : Appeal Suit filed under Section 96 read with Order XLI of Civil Procedure Code against the judgement and decree dated 02.03.2018 in O.S.No.3 of 2017, on the file of Family Court, Dindigul.

For Appellant

: Mr.H.Lakshmi Shankar

For Respondent

: Mr.N.Marimuthu
for Mr.A.Chandrakumar



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JUDGMENT

C.V.KARTHIKEYAN, J.

The defendant in O.S.No.3 of 2017 on the file of the Family Court, Dindigul, is the appellant herein.

2. O.S.No.3 of 2017 was initially filed as O.S.No.658 of 2009 before the Court of the Principal District Munsif, Dindigul. Subsequently, it was transferred to the Family Court, Dindigul, by proceedings of the Principal District Judge, Dindigul, in ROC No.8346/2017/A1, dated 07.11.2017.

O.S.No.3 of 2017 [Family Court, Dindigul] :-

3. The plaintiff, Mangaleshwari, claimed that she had married the defendant, Vellaya Pillai, who was also her relative, on 06.07.1973 at Kallipatty in Dindigul. She further claimed that, at the time of the marriage, her father had given her 100 sovereigns of gold jewellery, as well as silver items and other household articles worth approximately Rs.15,000/-, and that the marriage was celebrated in a grand manner.



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4. She stated that she lived with the defendant in his house at Kallipatty Village, however, she alleged that the defendant began to torture her and also developed relationships with other women. This compelled her to leave the matrimonial home and take refuge at her father's house.

5. Her father passed away in the year 1990. Thereafter, she was unable to maintain herself and, therefore, she lodged a complaint with the Panchayat. The Panchayat directed the defendant to pay monthly maintenance of Rs.2,500/-. She claimed that the defendant complied with this direction and paid the maintenance for some time, but stopped making payments from March 2009 onwards.

6. Despite her repeated demands, the defendant failed to resume payment. Under these circumstances, the suit was filed seeking a judgment and decree directing the defendant to pay a sum of Rs.5,000/- as past maintenance and further to pay Rs.2,500/- per month as maintenance, and also to pay the costs of the litigation.



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7. In his written statement, the defendant denied having any relationship with the plaintiff. In fact, he claimed that he did not even know who she was. He specifically denied having married her on 06.07.1973 or on any other date.

8. He further stated that he had married his wife, Muthulakshmi, in the year 1981, and that they were residing together peacefully. They have a son named Sathyendran.

9. The defendant further alleged that there had been several litigations between him and his sister concerning disputes relating to property and that the present suit had been instigated by his sister, who had set up the plaintiff to file a false case against him. Accordingly, he prayed that the suit be dismissed.

10. Based on the pleadings, the following issues were framed:-

1. *Whether the plaintiff is the lawfully wedded wife of the defendant?*
2. *Whether the plaintiff is entitled to claim maintenance?*
3. *To what other reliefs, if any, the plaintiff is entitled to?*



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11. During the trial, the plaintiff examined herself as P.W.1 and also examined two other witnesses, namely, Ramasamy and Ramalingam, as P.W.2 and P.W.3 respectively. The plaintiff did not mark any document.

12. The defendant examined himself as D.W.1 and further examined two witnesses, namely, Velusamy and Ayyanar Pillai, as D.W.2 and D.W.3 respectively. The defendant marked two documents as Exhibits D.1 and D.2, namely, the marriage invitation card of his son, Sathyendran dated 15.09.2011, wherein the name of his wife was mentioned as Muthulakshmi, and the transfer certificate of his son, Sathyendran.

13. The learned Judge of the Family Court observed that, although the defendant had denied any knowledge of the plaintiff, he had admitted during cross-examination that she was his distant relative.

14. The learned Judge also placed strong reliance on the testimony of P.W.3, Ramalingam, who is the husband of the defendant's sister. He deposed that the plaintiff and the defendant had married each other, had lived together as



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husband and wife, and that due to the defendant's conduct, the plaintiff had been compelled to leave the matrimonial home and seek shelter at her father's residence.

15. The learned Judge was of the opinion that the evidence of P.W.3, who is none other than the defendant's brother-in-law, clearly established that the plaintiff and the defendant were married on 06.07.1973 and had lived together thereafter. Issue No.1 was therefore answered that the plaintiff was the lawfully wife of the defendant.

16. The learned Judge further observed that, since the plaintiff had been living separately and since Issue No.1 had been answered in the affirmative holding that she was the lawfully wedded wife of the defendant, the plaintiff was entitled to maintenance of Rs.2,500/- per month from the defendant.

17. In view of the above findings, the learned Judge decreed the suit as prayed for, thereby, necessitating the filing of the present Appeal Suit.



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18. As stated above, the defendant has preferred the present Appeal Suit.

19. Heard arguments advanced by Mr.H.Lakshmi Shankar, learned counsel for the appellant and Mr.N.Marimuthu for Mr.A.Chandrakumar, learned counsel for the respondent.

20. Mr.H.Lakshmi Shankar, learned counsel for the appellant submitted that there were existing property disputes between the appellant and his sister. He contended that the present case was instigated as a result of such disputes, and that the appellant had been falsely implicated through the testimony of P.W.3, who is the husband of the appellant's sister.

21. The learned counsel argued that the evidence adduced on behalf of the respondent was false and unreliable. He further submitted that the respondent, in her capacity as the plaintiff, had the burden to independently prove the factum of marriage through credible evidence and could not rely on the testimony of other witnesses to establish that fact.



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22. It was also pointed out that the respondent had not produced any documentary evidence to support her claim, either to prove the solemnization of the alleged marriage, or to establish subsequent cohabitation, or even to substantiate the alleged directive from the Panchayat requiring the appellant to pay maintenance of Rs.2,500/- per month.

23. On these grounds, the learned counsel for the appellant contended that the entire claim was fabricated and lacking in evidentiary support, and therefore, prayed that this Court ought to allow the Appeal Suit and dismiss the Suit filed by the respondent.

24. Mr.N.Marimuthu, learned counsel for the respondent, on the other hand, submitted that, in his written statement, the appellant had claimed that he did not even know the respondent. However, during cross-examination, he admitted that the respondent was, in fact, his relative.



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25. The learned counsel pointed out the inconsistency in the appellant's stand and contended that such contradictions revealed the falsity of his defence. He further submitted that the marriage between the appellant and the respondent had taken place in the year 1973, and the testimony of P.W.3, the brother-in-law of the appellant, clearly established the fact of such marriage.

26. It was further argued that, being the lawfully wedded wife, the respondent had a legitimate expectation to be maintained by the appellant. Since he had failed to discharge that obligation, the respondent was constrained to approach the Court seeking maintenance.

27. The learned counsel finally submitted that the Trial Court had rightly appreciated the oral evidence and arrived at a just conclusion. He was emphatic in his submission that the Appeal Suit deserved to be dismissed.

C.M.P.(MD)No.9713 of 2018:-

28. This Civil Miscellaneous Petition has been filed by the appellant under Order XLI Rule 27 of the Code of Civil Procedure, seeking permission to produce



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as additional document in the appeal, a certified copy of the judgment dated 18.09.2012 in O.S.No.169 of 2011, on the file of the Principal District Munsif Court, Dindigul.

29. In the affidavit filed in support of the petition, the appellant has stated that the respondent was the leader of a self-help group and is alleged to have questionable antecedents. To substantiate this allegation and to challenge the credibility of the respondent's testimony, the appellant seeks to introduce the said judgment, which was passed in a suit filed by one Angammal against the respondent. It is contended that the additional document is necessary for a just adjudication of the appeal and ought to be received as additional evidence.

30. Order XLI Rule 27 of the Code of Civil Procedure permits the introduction of additional evidence at the appellate stage; however, such evidence must be relevant to the points framed for determination in the appeal.

31. In the instant case, the defendant has filed the Appeal Suit challenging the judgment of the Family Court, Dindigul, by which he was directed to pay

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maintenance to the plaintiff/respondent. The primary issue in the appeal relates to whether the respondent is his lawfully wedded wife and his liability to pay maintenance.

32. We are of the considered view that the additional document sought to be introduced, which pertains to the character or conduct of the respondent, does not bear direct relevance to the determination of both these aspects.

33. In view of the above, **C.M.P.(MD)No.9713 of 2018 is dismissed.**

Points for determination in the Appeal Suit:-

34. On the basis of the pleadings and the evidence adduced, the following points are framed for determination under Order XLI Rule 31 of the Code of Civil Procedure:-

1. *Whether the respondent had established the fact of a valid and subsisting marriage with the appellant?*
2. *Whether the appellant is liable to pay maintenance to the respondent?*



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35. The appellant herein was the defendant, and the respondent herein was the plaintiff in O.S.No.3 of 2017 on the file of the Family Court, Dindigul.

36. For the sake of convenience in the narration of facts, examination of the legal issues involved, and analysis of the evidence adduced by both parties, it would be appropriate to refer to them as they were described in the trial Court, namely, as 'plaintiff' and 'defendant'. To reiterate, the plaintiff is the respondent herein, and the defendant is the appellant herein.

37. O.S.No.3 of 2017 was originally instituted as O.S.No.658 of 2009 on the file of the Additional District Munsif Court, Dindigul. The plaintiff filed the suit seeking a judgment and decree directing the defendant to pay a sum of Rs.5,000/- towards past maintenance, and for a further direction to pay a sum of Rs.2,500/- per month towards future maintenance.

38. The plaintiff claimed that she had married the defendant on 06.07.1973 at Kallipatty Village, which is the defendant's native place. At the time of marriage, her father had allegedly given 100 sovereigns of gold jewellery, as well

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as silver articles and household items worth approximately Rs.15,000/-. The marriage was said to have been conducted in a grand manner. The plaintiff further contended that the defendant later began to lead a wayward life, which forced her to leave the matrimonial home and return to her father's residence in Vannampatty, a neighbouring village.

39. She had further stated that she approached the Village Panchayat, which persuaded the defendant to pay her Rs.2,500/- per month as maintenance. According to her, the defendant complied with this arrangement until March 2009, after which he stopped making payments. Consequently, she filed the present suit seeking monthly maintenance of Rs.2,500/-.

40. In his written statement, the defendant denied knowing the plaintiff, denied the alleged marriage, denied leading a wayward life, and denied intervention by the Village Panchayat regarding maintenance. He stated that he had married one Muthulakshmi in 1981, with whom he was living peacefully, and that they had a son named Sathyendran. The defendant further alleged that he was involved in a property dispute with his sister, and that the plaintiff had been instigated by persons inimical towards him to file the false suit.



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41. The plaintiff did not file any documents along with the plaint either to substantiate the fact of marriage or to substantiate that 100 sovereigns of gold jewellery were given to her at the time of marriage or to substantiate that silver and household articles being given to her or to substantiate her cohabitation with the defendant or to substantiate the proceedings before the Panchayat. The case, therefore, revolved entirely around the oral evidence adduced by both the plaintiff and the defendant.

42. In addition to examining themselves as witnesses, both the plaintiff and the defendant examined two other witnesses each.

43. The plaintiff examined:

(i) P.W.2 – Ramasamy, son of Muniya Pillai, resident of Kallipatty Village;

and

(ii) P.W.3 – Ramalingam, son of N.T. Ramasamy Pillai, also a resident of Kallipatty Village.



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It may be noted that P.W.3, Ramalingam, is the brother-in-law of the defendant, being the husband of the defendant's sister, with whom the defendant was involved in property-related litigation.

44. The defendant examined:

- (i) D.W.2 – Velusamy, son of Arunasamy Pillai, resident of Kallipatty Village; and
- (ii) D.W.3 – Ayyanar Pillai, son of Kandasamy Pillai.

Incidentally, D.W.3, Ayyanar Pillai, is the father-in-law of the defendant, being the father of his wife, Muthulakshmi.

45. A careful perusal of the depositions of P.W.2 and P.W.3 on the one hand, and D.W.2 and D.W.3 on the other, reveals that all four were partisan witnesses, who appeared more inclined to support the respective parties who had called them, than to assist the Court in arriving at the truth. Each of them deposed evidence that was clearly aligned with the case of the party who had summoned them, and denied in entirety the version put forth by the opposite side.



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46. P.W.2 claimed ignorance of the defendant's relationship with Muthulakshmi. P.W.3 went so far as to assert that the defendant had married the plaintiff, and that Muthulakshmi was merely a concubine. D.W.2, on the contrary, stated that the defendant had married only Muthulakshmi, and never had any relationship whatsoever with the plaintiff. D.W.3, the father-in-law of the defendant, also deposed that the defendant had married only his daughter Muthulakshmi, and had no relationship with any other woman, particularly, with the plaintiff.

47. From their testimonies, it is evident that all the four witnesses had entered the witness box with a predetermined agenda not to speak the truth under oath, but to support the case of the party who called them, even at the cost of suppressing material facts and to outrightly deny established facts.

48. The plaintiff, who examined herself as P.W.1, merely reiterated the averments made in the plaint. Likewise, the defendant, examined as D.W.1, repeated the statements made in the written statement.



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49. The defendant marked two documents:

- (i) Ex.B.1 – the marriage invitation card of his son, Sathyendran, which mentioned his name and his wife, Muthulakshmi, and
- (ii) Ex.B.2 – the Transfer Certificate of his son.

50. A further reading of the evidence reveals that, during the cross-examination of D.W.1, the plaintiff introduced a photograph, purportedly showing the defendant standing alongside another woman. This photograph was marked as Ex.A.1. However, there is no reference to Ex.A.1 in the judgment, particularly, in the list of documents marked on behalf of the plaintiff. Additionally, the said photograph is not available in the original case bundle.

51. Even otherwise, the photograph is not accompanied by the requisite certificate under Section 65B of the Indian Evidence Act, 1872, as was required at the time. Consequently, no evidentiary value can be attached to Ex.A.1.

52. It appears that the primary purpose of examining the witnesses was to discredit the opposing party, rather than to assist the Court in determining the core issue framed for determination. The character and conduct of both the defendant and the plaintiff were assailed.



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53. In this context, C.M.P.(MD)No.9713 of 2018 was filed by the appellant seeking to mark, as additional evidence, the certified copy of a judgment dated 18.09.2012 in O.S.No.169 of 2011 on the file of the Principal District Munsif Court, Dindigul, with the sole intention of discrediting the plaintiff. That petition has been dismissed, and reasons for the same have already been discussed *supra*.

54. As such, the trial Court was left to deliver a judgment based purely on unreliable oral evidence, with no credible or admissible documentary evidence adduced by either side. Notably, the trial Court relied solely on the evidence of P.W.3, the brother-in-law of the defendant, who stated that the defendant had married the plaintiff, and on that basis proceeded to decree the suit.

55. However, the trial Court failed to properly consider the testimonies of D.W.2 and D.W.3. While placing reliance on the evidence of P.W.3, the Court offered no justification for not placing equal weight on the evidence of D.W.3, who is the father-in-law of the defendant.

56. All the six witnesses examined during the trial, in essence, merely discredited the opposing party:



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- (i) The plaintiff's witnesses sought to discredit the defendant, and
- (ii) The defendant's witnesses sought to discredit the plaintiff.

None of the witnesses provided credible, admissible, or convincing evidence on the central issue before the Court, namely, whether the plaintiff was the legally wedded wife of the defendant.

57. There is absolutely no reliable evidence to support the plaintiff's claim of marriage, apart from oral assertions made by interested and clearly tutored witnesses, who appeared unwilling to state anything beyond what they were cajoled to say.

58. We are of the firm view that all the witnesses stand discredited and are wholly unreliable. It is evident that this Appeal Suit hinges purely on questions of fact, particularly, the factual determination of whether the plaintiff was married to the defendant in the year 1973, as claimed by her.

59. To reiterate, there is no evidence at all to support that particular fact except for the statements of the witnesses, which are wholly unreliable. There is



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no evidence to show that the marriage was conducted in a grand manner and no evidence to show that her father gave her 100 sovereigns of gold apart from silver and household articles. There is no evidence to establish the proceedings before the Panchayat or the direction of the Panchayat to the defendant to pay monthly maintenance of Rs.2,500/- to the plaintiff. There is no evidence to show that a Police complaint was lodged on alleged breach by the defendant to pay maintenance or that a legal notice was issued. Even the marriage invitation card was not produced by the plaintiff.

60. In AIR 1960 SC 115 [**Radha Prasad Singh v. Gajadhar Singh**], the Hon'ble Supreme Court, in Paragraph 14, while examining the legal position when a first appeal lies on facts and the credibility of a particular witness has to be assessed, held as follows:-

"14. The position in law,, is that when an appeal lies on facts it is the right and the duty of the Appeal Court to consider what its decision on the question of facts should be; but in coming to its own decision it should bear in mind that it is looking at the printed record and has not the opportunity of seeing the witnesses and that it should not lightly reject the Trial Judge's conclusion that the evidence of a particular



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*witness should be believed or should not be believed particularly when such conclusion is based on the observation of the demeanour of the witness in Court. **But, this does not mean that merely because an appeal court has not heard or seen the witness it will in no case reverse the findings of a Trial Judge even on the question of credibility, if such question depends on a fair consideration of matters on record. When it appears to the Appeal Court that important considerations bearing on the question of credibility have not been taken into account or properly weighed by the Trial Judge and such considerations including the question of probability of the story given by the witnesses clearly indicate that the view taken by the Trial Judge is wrong, the Appeal Court should have no hesitation in reversing the findings of the Trial Judge on such questions. Where the question is not of credibility based entirely on the demeanour of witnesses observed in Court but a question of inference of one fact from proved primary facts the Court of Appeal is in as good a position as the Trial Judge and is free to reverse the findings if it thinks that the inference made by the Trial Judge is not justified.***

[Emphasis supplied]

61. It was also held by the Hon'ble Supreme Court in **Madhusudan Das v. Narayani Bai**, reported in (1983) 1 SCC 35, in Paragraph 8, as follows:



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"8. When there is a conflict of oral evidence on any matter in issue and its resolution turns upon the credibility of the witnesses, the general rule is that the appellate court should permit the findings of fact rendered by the trial court to prevail unless it clearly appears that some special feature about the evidence of a particular witness has escaped the notice of the trial court or there is a sufficient balance of improbability to displace its opinion as to where the credibility lies. In this connection, reference may usefully be made to **W.C. Macdonald v. Fred Latimer** [AIR 1929 PC 15, 18 : 29 Mad LW 155 : 112 IC 375] where the Privy Council laid down that when there is a direct conflict between the oral evidence of the parties, and there is no documentary evidence that clearly affirms one view or contradicts the other, and there is no sufficient balance of improbability to displace the trial court's findings as to the truth of the oral evidence, the appellate court can interfere only on very clear proof of mistake by the trial court. In **Watt v. Thomas** [LR 1947 AC 484, 486 : (1947) 1 All ER 582 : 176 LT 498] it was observed: "...it is a cogent circumstance that a judge of first instance, when estimating the value of verbal testimony, has the advantage (which is denied to courts of appeal) of having the witnesses before him and observing the manner in which their evidence is given." This was adverted to with approval by the Privy Council in **Sara Veeraswami alias Sara Veerraju v. Talluri Narayya** [AIR 1949 PC 32 : 75 IA 252 : 1948 All LJ 479] and found favour with this Court in **Sarju Pershad v. Raja Jwaleshwari Pratap Narain Singh** [1950 SCC 714 : 1950 SCR 781, 783 : AIR 1951 SC 120 :



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1950 SCJ 583] . *It seems to us that this approach should be placed in the forefront in considering whether the High Court proceeded correctly in the evaluation of the evidence before it when deciding to reverse the findings of the trial court. The principle is one of practice and governs the weight to be given to a finding of fact by the trial court. **There is, of course, no doubt that as a matter of law if the appraisal of the evidence by the trial court suffers from a material irregularity or is based on inadmissible evidence or on a misreading of the evidence or on conjectures and surmises the appellate court is entitled to interfere with the finding of fact.*** [Emphasis supplied]

62. The position of law was explained by the Hon'ble Supreme Court in the judgment reported in **(2008) 10 SCC 497 [Jagadish Singh v. Madhuri Devi]**, in Paragraph 36, as follows:

" 36.

- (i) *it applies its mind to reasons given by the trial court;*
- (ii) *it has no advantage of seeing and hearing the witnesses; and*
- (iii) *it records cogent and convincing reasons for disagreeing with the trial court."*

63. It is thus seen that the Hon'ble Supreme Court has very clearly and categorically held that when there is a conflict of oral evidence on any issue, and



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the resolution of that issue turns upon the credibility of witnesses, the opinion of the trial Court should ordinarily prevail. However, the first Appellate Court also has a duty to reappraise the evidence and determine whether the trial Court's appreciation of the evidence suffers from any material irregularity or is based on inadmissible evidence, misreading of evidence, or on conjectures and surmises.

64. In the present case, the learned Trial Judge completely omitted reference to the evidence of D.W.2 and D.W.3. The learned Judge placed total reliance solely on the testimony of P.W.3, which, in our considered opinion, was not the correct approach, particularly, since P.W.3 himself was an interested and therefore, unreliable witness. The focus of the witnesses' testimonies appeared to be more on discrediting the conduct of the defendant, rather than offering substantive proof on the core issue before the Court, namely, whether the plaintiff was the legally wedded wife of the defendant.

65. The conclusion reached by the learned Trial Judge is based on conjectures and surmises drawn from wholly unreliable evidence. We are firmly of the view that the learned Judge misdirected herself in appreciating the oral



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evidence of P.W.2 and P.W.3. Both these witnesses and indeed also the witnesses examined on behalf of the defendant were interested parties from the same village, yet each disclaimed knowledge of material facts asserted by the opposite side. Such evidence is inherently improbable and forcefully suggests that the witnesses were tutored.

66. There is absolutely no tangible, believable, or credible evidence of the factum of marriage between the plaintiff and the defendant. The only conclusion that has to be drawn is to reject the evidence adduced, and hold that the plaintiff has failed to establish, even on balance of probabilities, that she married the defendant on 16.07.1973 or on any other date.

67. There is no evidence whatsoever to support the claim that such a marriage took place, nor is there evidence to prove that 100 sovereigns of gold jewellery were given, or that silver and household articles worth Rs.15,000/- were provided to the plaintiff. Furthermore, there is no evidence to establish cohabitation between the plaintiff and the defendant, or that any Panchayat was convened wherein the defendant was allegedly directed to pay Rs.2,500/- per month as maintenance.



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68. We hold that the learned Trial Judge had misdirected herself in appreciating unreliable evidence to the undue advantage of the plaintiff.

69. In the absence of any credible evidence, we are of the firm opinion that the judgment of the Trial Court is unsustainable and does not withstand appellate scrutiny. It is accordingly liable to be set aside.

70. The points framed for determination are, therefore, answered that there is no evidence before the Court to establish that the plaintiff was the legally wedded wife of the defendant. Consequently, there is no obligation on the part of the defendant to pay maintenance to the plaintiff.

71. In the result,

(i) The Appeal Suit is allowed. No costs. The judgment and decree of the trial Court in O.S.No.3 of 2017, dated 02.03.2018 is set aside; and

(ii) C.M.P.(MD)No.9713 of 2018 is dismissed. No costs

Index : Yes
NCC : Yes
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[C.V.K., J.] & [R.V., J.]
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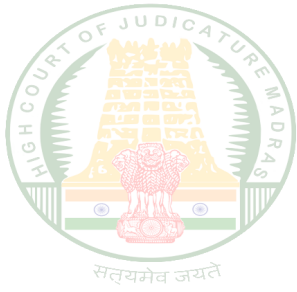


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To

- 1.The Judge,
Family Court,
Dindigul.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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A.S.(MD)No.92 of 2018

C.V.KARTHIKEYAN, J.
and
R.VIJAYAKUMAR, J.

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PRE-DELIVERY JUDGMENT MADE IN
A.S.(MD)No.92 of 2018

17.09.2025