

Subbarayan Vs. 1.Chellammal

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Court : Chennai

Decided On : Nov-18-2014

Judge : P.Devadass

Appellant : Subbarayan

Respondent : 1.Chellammal

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

18. 11.2014 CORAM THE HONOURABLE MR.JUSTICE P.DEVADASS SECOND APPEAL (MD) No.535 of 2011 and M.P.(MD) No.1 of 2011 Subbarayan ... Appellant/Defendant -vs- 1.Chellammal 2.Sasikala ... Respondents/Plaintiffs PRAYER Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the Judgment and Decree, dated 03.12.2010, passed in A.S.No.68 of 2010, on the file of the learned Additional Subordinate Judge, Karur, modifying the Judgment and Decree, dated 19.02.2010, passed in O.S.No.481 of 2009, on the file of the learned District Munsif, Karur. !For Appellant : Mr.R.Devaraj Mr.D.Rajendran ^For Respondents : Mr.D.Rajkumar for Mr.G.R.Swaminathan for R1 & R2 :

JUDGMENT

Husband of the first plaintiff is up in arm as against the second plaintiff, who claimed herself as his daughter, he slams at his wife/first plaintiff for they having

claimed maintenance from him.

2. Appellant/defendant married the first plaintiff, namely, Chellammal. Due to difference of opinion arose between them, they fell apart. She was driven away when she was carrying the 2nd plaintiff in her womb, while she was 7 months old. First plaintiff is in her parent's house and the defendant is in another house with another lady, namely, Lakshmi. He went through a bigamous marriage with Lakshmi. He is happy with two children through Lakshmi. In the circumstances, 1st plaintiff sought for maintenance for herself and for her daughter/second plaintiff with a charge over defendant's property. This is the gist of the plaint pleadings.

3. Defendant accepted his marriage with first plaintiff, but not accepted his paternity to the second plaintiff. Further, he alleged that 1st plaintiff deserted him without any justification to do so. She has adulterous conduct. She has means of her own, she is not in financial crisis, thus, they are not entitled to maintenance or any amount from him. This is the gist of his case.

4. The Trial Court framed necessary issues and tried the suit. The first plaintiff examined herself as P.W.1 and Sambath, Kuppusamy as P.Ws.2 and 3 and marked Exs.A1 to A14, while defendant Subbarayan examined himself as D.W.1 and marked Exs.B1 to B6.

5. Appreciating the arguments of both sides and evidence adduced, the Trial Court/Principal District Munsif's Court, Karur, found the stand of the defendant unjustified, rejected his case and decreed the suit for maintenance and for certain other expenses created a charge over defendant's share in the suit property.

6. The defendant went to the 1st Appellate Court/Additional Sub Court, Karur, by way of A.S.No.68 of 2010. The 1st Appellate Court concurred with the findings of the Trial Court and dismissed the appeal, however, with little tinkering, namely, restricting the maintenance sofar as the second plaintiff is concerned upto her date of marriage.

7. Thus, this second appeal by the defendant.

8. It was contended by the learned counsel for the appellant that unreasonably without any justification, long back 1st plaintiff had withdrawn her society from the defendant, thus, she is not entitled to any maintenance from him.

9. It was contended by the learned counsel for the appellant that the paternity of the appellant to the second plaintiff through the first plaintiff has not been established in a manner known to law. No scientific test has been adopted. The first plaintiff/mother thoroughly failed to link the birth of second plaintiff to the defendant.

10. The learned counsel for the respondents submitted that Ex.A1 nails the defendant with regard to claim of maintenance to first plaintiff.

11. The learned counsel for the plaintiffs would further contend that it is a great pity, for the money sake, the defendant is denying his relationship to his daughter/second plaintiff. The evidence oral and documentary expose himself and he caught by his own act. The appellant may be an erring father to his daughter/second plaintiff, but he is duty bound to provide her maintenance.

12. Further, the learned counsel for the respondents submitted that it is a slur on his character in setting forth an unpalatable plea that after having admitted that the second plaintiff is his daughter, in written statement, it is unfortunate to state in his evidence that it is a typographical error. It is a great blunder to adopt such an unsavory attitude in the subsequent course of the trial of the suit.

13. Dispassionately I have given my anxious consideration to the pleadings of the parties, evidence on record and also perused the Judgments and Decrees of the Court below.

14. Defendant did not deny his marriage with the 1st plaintiff. Defendant is living with another woman, namely, Lakshmi. Thorough her he is also having two children. The plea of the first plaintiff is that in such circumstances, she has been driven away from the house. Admittedly, a panchayat was held with regard to their family dispute. Ex.A1 agreement was arrived at. Defendant could not deny the panchayat and also Ex.A1. Ex.A1 exposed his duty to provide maintenance to her.

He is bound to provide her maintenance. Both the counsels have rightly held his liability to do so.

15. The defendant disputes his paternity to the second plaintiff. Thus, he says that he is not liable to pay maintenance to her.

16. The Indian Evidence Act, 1872, which stood the test of time, is based on common knowledge, human experience, human conduct. To illustrate, we can notice Section 112 of the Act. The gist of the Section 112 is so long as the marital bondage is in force as between the spouses and during such period if a child is born then there is conclusive proof that the child is born to that man. However, it can be negated by showing that there is no possibility of having access to the wife. Actually, this is based on human brilliance and realities of normal family life.

17. The defendant did not deny that the first plaintiff is his wife. Quarrel arose between them. The specific plea in the plaint is that first plaintiff was thrown out when she was carrying baby in her womb. Then it was her 7th month. The specific plea of the defendant in the written statement is that the birth of the second plaintiff was not made known to him and he did not had the countenance of the child, so the child is not his child. But, at one part of the written statement he accepted that he is the father of her. Only during trial, he says that it is a typographical mistake. It is a great blunder to make such a revelation. It is unacceptable.

18. At one point of time, a panchayat was held between both the parties. The mediators have decided that the defendant has to pay certain sum of money in full quit to the plaintiffs and the defendant agreed and thereafter the compromise was reduced into writing. It is Ex.A1. In Ex.A1, there is reference with respect to the second plaintiff. The defendant admits Ex.A1. So, he accepts the second plaintiff.

19. Further, in Ex.A6, reply notice, he did not deny the paternity of second plaintiff. He may have fight with his wife/first plaintiff, but not with his daughter/second plaintiff.

20. In view of the foregoing, absolutely there no merit in this appeal. No substantial question of law is involved in this appeal.

21. In the result, this second appeal fails and it is dismissed with costs. The Judgments and Decrees of the Courts below are confirmed. Consequently, connected miscellaneous petition is closed. 18.11.2014 Internet : Yes / No Index : Yes / No krk To:

1. The Principal District Judge, Karur. 2.The Additional Sub Judge, Karur. 3.The District Munsif, Karur. P.DEVADASS, J krk SECOND APPEAL (MD) No.535 of 2011 18.11.2014

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