

**THE HON'BLE SRI JUSTICE SUBBA REDDY SATTI**

**APPEAL SUIT No.701 of 2002**

**JUDGMENT:**

The unsuccessful plaintiff filed the present appeal against the decree and judgment dated 08.03.2001 in O.S.No.33 of 1997 on the file of the Court of V Additional District Judge, Tirupathi.

2. The appellant herein being the plaintiff, filed O.S.No.33 of 1997 claiming maintenance against her husband, arrayed as 1<sup>st</sup> defendant in the suit. She claimed maintenance at Rs.1,000/-; Rs.3,000/- for clothing; Rs.2,000/- for medical expenses, in total Rs.6,000/- per month and also prayed to create charge over the plaint schedule properties. In the plaint, properties were described as plaint 'A' and 'B' schedule. Plaint 'A' schedule consists of Ac.1.40 cents of land in S.No.56/6 and Ac.1.86 cents of land in S.No.74/1A. Plaint 'B' schedule consists of two items. Item No.1 consists of RCC building bearing Door No.20-1-416/18 in an extent of East to West: 47 feet and North and South: 44 feet. Item No.2 consists of thatched house in an extent of 50 Ankanams.

3. In the plaint it was contended interalia that the plaintiff's marriage was solemnized with 1<sup>st</sup> defendant on 26.06.1991; that they were blessed with son and daughter and after birth of daughter by name Yamini in the year 1994, 1<sup>st</sup> defendant addicted to vices, such as drinking, gambling and neglected to maintain her; that she is not having any means to maintain herself and children. Hence, filed the suit for the reliefs stated *supra*.

4. 1<sup>st</sup> defendant is the husband. 2<sup>nd</sup> defendant is purchaser of property under Ex.B-2 sale deed dated 13.11.1995. Defendants 3

and 4 are daughter and son of 5<sup>th</sup> defendant. Defendants 3 and 4 entered into an agreement of sale with 1<sup>st</sup> defendant in respect of part of item No.1 of plaint 'B' schedule property under Ex.B-9 and eventually filed suit in O.S.No.165 of 1997 on the file of Principal Senior Civil Judge, Tirupathi for specific performance.

5. The 1<sup>st</sup> defendant filed written statement and contended *inter alia* that he has not addicted any bad vices; that he is looking after his wife and children with love and affection and maintaining them properly; that he has not created any sham and nominal documents. Having filed written statement, he remained *ex parte*.

6. The 3<sup>rd</sup> defendant filed written statement and the same was adopted by defendants 2, 4 and 5. The defendants contended *inter alia* that item No.1 of 'B' schedule property i.e. vacant site was purchased by 2<sup>nd</sup> defendant for a consideration of Rs.99,000/- under Ex.B-2 registered sale deed dated 13.11.1995 and possession was delivered to 2<sup>nd</sup> defendant; that for the remaining extent in item No.1 of 'B' schedule property, 1<sup>st</sup> defendant entered into Ex.B-9 agreement of sale with defendants 3 and 4 for a consideration of Rs.4,00,000/-; that 1<sup>st</sup> defendant received Rs.3,00,000/- as advance sale consideration and agreed to receive balance consideration on or before 12.05.1997; that since the 1<sup>st</sup> defendant refused to receive balance of consideration, suit in O.S.No.165 of 1997 was filed seeking specific performance; that after filing of suit, the 1<sup>st</sup> defendant in collusion with his wife got filed the present suit for maintenance; that 1<sup>st</sup> defendant also got filed another suit in O.S.No.173 of 1997 through minor children for partition. It was further contended that 1<sup>st</sup> defendant has been

running two hotels in Tirupathi and he is getting income and with that income, 1<sup>st</sup> defendant purchased vacant site of 'B' schedule property and later constructed house in the entire 'B' schedule property and hence, 'B' schedule property is the self acquired property of 1<sup>st</sup> defendant and eventually prayed the Court to dismiss the suit.

7. The trial Court framed the following issues:

- (1) Whether the plaintiff is entitled for maintenance and also for medical expenses as prayed for?
- (2) Whether the plaintiff is entitled to create a charge over the suit property for her maintenance?
- (3) Whether this suit is filed by the plaintiff in collusion with the 1<sup>st</sup> defendant with ulterior motive to defeat the agreement of sale dated 13.02.1997 executed by 1<sup>st</sup> defendant in favour of D.3 and D.4 and registered sale deed dated 13.11.1995 executed by D.2 in favour of D.1 for 1<sup>st</sup> item of 'B' schedule property?
- (4) To what relief?

8. In support of case of plaintiff, she examined herself as P.W.1, got examined P.W.2 (father) and P.W.3. Exs.A-1 and A-2 were marked. On behalf of defendants, 2<sup>nd</sup> defendant examined himself as D.W.1, 5<sup>th</sup> defendant examined himself as D.W.2, 3<sup>rd</sup> defendant examined himself as D.W.3 and examined D.W.4. Exs.B-1 to B-11 were marked.

9. After considering the evidence, both oral and documentary, available on record, the trial Court dismissed the suit.

10. Heard Sri P.Jagadish Chandra Prasad, learned counsel for the appellant and Sri J.Ugranarasimha, learned counsel for the respondents 2 to 4.

11. Learned counsel for the appellant would contend that the trial Court did not consider the evidence of P.Ws.1 to 3 in proper perspective. He would further contend that there is no collusion between the plaintiff and 1<sup>st</sup> defendant and the findings recorded by the trial Court is without any evidence on record.

12. *Per contra*, learned counsel for respondents would contend that the trial Court considered all the aspects and eventually dismissed the suit and supported the findings of the trial Court. He would further contend that the suit O.S.No.165 of 1997 filed for specific performance was decreed and the same was executed. He would further contend suit O.S.No.173 of 1997 filed seeking partition, was dismissed. He would further contend that to his knowledge no appeals were preferred against those two decrees and judgments and he prayed the Court to dismiss the appeal.

13. The following points arise in this appeal for consideration:

- (1) Whether the plaintiff proved that 1<sup>st</sup> defendant-husband neglected her and hence, she is entitled for maintenance?
- (2) Whether the plaintiff is entitled to create a charge over the suit schedule property in lieu of her maintenance?
- (3) Whether the plaintiff filed the suit in collusion with 1<sup>st</sup> defendant to defeat sale deed executed in favour of 2<sup>nd</sup> defendant and agreement of sale executed in favour of defendants 3 and 4 in respect of item No.1 of plaint 'B' schedule property?

14. Since these three points for consideration are interrelated, this Court deems it proper to deal with the same at once.

15. Findings basing on evidence relevant are extracted infra are as follows:

(1) In the suit O.S.No.173 of 1997, got filed through children seeking partition of schedule properties, neither father of 1<sup>st</sup> defendant nor his brother were made parties, though it was contended by the plaintiffs therein that plaintiff schedule properties are the joint family properties of the 1<sup>st</sup> defendant, his father and brother.

(2) Item No.1 of plaintiff schedule property is self acquired property of 1<sup>st</sup> defendant.

(3) P.W.2 did not purchase any property much less, vacant sit of plaintiff 'B' schedule property and made constructions therein.

(4) 2<sup>nd</sup> defendant purchased part of item No.1 of plaintiff 'B' schedule property under Ex.B-2 and that the defendants 3 and 4 purchased item No.2 of plaintiff schedule property under Ex.B-9 agreement of sale. They are true, genuine and binding on the 1<sup>st</sup> defendant.

(5) The trial Court also held that the plaintiff in collusion with 1<sup>st</sup> defendant filed the suit seeking maintenance to defeat the rights of defendants 2 to 5 under Exs.B-2 and B-9.

16. It was pleaded by the plaintiff that after birth of daughter by name Yamini in 1994, the 1<sup>st</sup> defendant was addicted to vices and neglected to maintain the plaintiff and her children. In the cross examination, she deposed that at the end of 1996, herself and her husband celebrated inaugural function and occupied newly constructed house. She further deposed that two years after

inaugural celebration of the house, 1<sup>st</sup> defendant construction kitchen room in the first floor by spending Rs.8,000/-. These admissions made by P.W.1 in her cross examination amply disproved her contention that 1<sup>st</sup> defendant-husband neglected to maintain the plaintiff. It is also to observe that 1<sup>st</sup> defendant filed Ex.B-11 caveat and the address shown is D.No.20-1-416/80. Exs.B-6 and B-7, which are interlocutory applications filed by 1<sup>st</sup> defendant in O.S.No.165 of 1997 shows that 1<sup>st</sup> defendant is residing in D.No.20-1-416/80, Subhash Nagar, Tirupathi. The appellant/plaintiff contended that she has been residing in D.No.20-1-416/80, Subhash Nagar, Tirupathi. Thus, a careful consideration of evidence, it clinchingly proved that the plaintiff and 1<sup>st</sup> defendant have been residing under the one roof.

17. Coming to the plaint 'B' schedule property, the plaintiff contended that item No.1 of plaint 'B' schedule property was purchased by her husband with joint family funds and subsequently, he constructed house in item No.2 of plaint 'B' schedule property with joint family funds. The plaintiff examined her father as P.W.2, who deposed that the plaint 'B' schedule properties are not joint family properties and he purchased the vacant site with his own funds and got it registered in the name of his son-in-law i.e. 1<sup>st</sup> defendant and subsequently, he got constructed house in item No.2 of plaint 'B' schedule property. Thus the evidence of P.Ws.1 and 2 are inconsistent and the evidence of P.W.2 is beyond the pleading of P.W.1. In fact, 1<sup>st</sup> defendant filed Ex.B-11 caveat and pleaded that plaint 'B' schedule property is his self-acquired property. In Ex.B-2 it was recited that plaint 'B' schedule property is his self-acquired property. Taking

all these facts into consideration, this Court hold that plaint 'B' schedule property is self-acquired property of 1<sup>st</sup> defendant and after alienating part of the schedule property under Ex.B-2 sale deed and after entering into Ex.B-9 agreement of sale with defendants 3 and 4, to defeat the rights and interest of respective parties, 1<sup>st</sup> defendant got filed suit by his wife. Since, the appellant failed to prove the act of negligence on the part of D1, her husband in the suit, neither she is entitled to claim maintenance nor charge over the schedule properties.

18. In view of the findings recorded *supra*, this Court holds that there are no merits in this appeal and hence, the appeal is liable to dismissed, however, without costs.

19. Accordingly, the appeal is dismissed. No order as to costs.

As a sequel, all the pending miscellaneous applications shall stand closed.

**SUBBA REDDY SATTI, J**

8<sup>th</sup> March, 2022

PVD

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