
(1945) 07 MAD CK 0026
In the Madras High Court

Munuswami Pillai

APPELLANT

Vs

Doraikannu Ammal

RESPONDENT

Date of Decision : 27-07-1945

Acts Referred:

Citation : AIR 1946 Mad 222 : (1945) 58 LW 570 : (1945) 2 MLJ 408

Hon'ble Judges : Kuppuswami Ayyar, J;Kuppuswami Aiyar, J

Bench : Division Bench

Judgement

Kuppuswami Ayyar, J.—This is a petition to revise the order of the Special First Class Magistrate, Saidapet, enhancing the rate of maintenance awarded to the respondent, the wife of the petitioner, in a previous order of that Court on the ground that the life has become costlier and that she could not be able to live on the same rate of maintenance.

2. One of the objections raised by the petitioner (husband) is that he and his wife had lived together as husband and wife after the passing of the previous order and that therefore the original order of the Special First Class Magistrate has ceased to be effective it will have to be decided whether a claim for maintenance is sustainable on subsequent conduct. Of course, the wife pleaded that there was no real living as husband and wife, that, when she applied on a prior occasion for enhancement of the rate and when that petition came on for hearing, her husband, to escape the consequence of an enhancement of the rate, played a fraud on her stating that he would take her back and maintain her and she agreed not to press the petition. But in two months he made it impossible for her to live with him in the house by placing her in charge of his cattle while he himself was going and messing in his concubine's house and sleeping there while her mother was feeding her. The ruling in Vasantam Venkayya Vs. Vasantam Raghavamma, is to the effect that an order for maintenance in favour of a Hindu wife must be regarded as having become ineffective if, subsequent to the passing of the order, they happen to live as husband and wife. The question for consideration was stated at page 25 by His Lordship the Chief Justice as being

whether a wife who has obtained a decree for maintenance could enforce it after having cohabited with her husband. Here the wife denied that she had cohabited with her husband and stated that she was only subjected to a ruse by her husband who offered to take her and made her live in his house but was not taken care of by him. She denies that she lived with her husband as husband and wife. If she had lived with her husband as husband and wife, an order, whether a decree of a Civil Court or an order of a Criminal Court would cease to be operative and therefore she will have to base her claim on facts which happened subsequent to their living as husband and wife. The question has not been considered by the lower Court. The order of the lower Court is therefore set aside and the petition is remanded to the lower Court for considering this aspect of the case and disposing of the case in the light of these observations.