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C.M.S.A.Nos.26 and 27 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Civil Miscellaneous Second Appeal Nos.26 and 27 of 2016
and
C.M.P. No.10782 of 2016

T.P.Rameshkumar

... Appellant in both CMSA's

-Versus-

Yasodha Priyadharshini

... Respondent in both CMSA's

Common Prayer :- This Civil Miscellaneous Second Appeals are filed under Order 43 Rule 1 of CPC and Section 104 and Section 28 of Hindu Marriage Act read with Section 100 CPC to set aside the judgment and decree dated 12.01.2016 made in CMA No.4 of 2015 and CMA No.5 of 2014 on the file of III Additional District Judge, Gobichettipalayam confirming the decree and judgment dated 09.12.2013 made in HMOP No.125 of 2012 and HMOP No.50 of 2013 on the file of the Sub-Court, Gobichettipalayam.

In Both CMSA's

For Appellant

: M/s.R.S.Akila for
M/s.Sudha Ramalingam

For Respondent

: Mr.M.Guruprasad



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COMMON JUDGMENT

The Civil Miscellaneous Second Appeals are filed to set aside the judgment and decree dated 12.01.2016 made in CMA No.4 of 2015 and CMA No.5 of 2014 on the file of III Additional District Judge, Gobichettipalayam, confirming the decree and judgment dated 09.12.2013 made in HMOP No.125 of 2012 and HMOP No.50 of 2013 on the file of the Sub Court, Gobichettipalayam.

2. Both the cases have been filed by the husband and the respondent is his wife. The respondent is the legally wedded wife of the appellant. The marriage between the appellant and the respondent was solemnized on 27.11.2006 and a male child was born to them. Subsequently they separated from each other. Thereafter, the husband had filed a petition in HMOP No.50 of 2013 for divorce on the ground of cruelty and desertion under Section 13(1)(ia)(ib) of the Hindu Marriage Act. Pending the said petition, the wife had filed a petition in HMOP No.125 of 2012, under Section 9 of



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Hindu Marriage Act for restitution of conjugal rights before the Sub Court,
Gobichettipalayam.

3. The trial Court, after hearing both sides and considering the materials, allowed the petition filed by the wife for restitution of conjugal rights and dismissed the petition filed by the husband for divorce on both the grounds. Challenging the said orders of dismissal of divorce and restitution of conjugal rights, the husband filed appeals in CMA No.4 of 2015 and CMA No.5 of 2014 on the file of III Additional District Judge, Gobichettipalayam. The learned III Additional District Judge, after considering the facts and re-appreciating the entire evidence, dismissed the appeals filed by the husband by giving independent findings, by judgment dated 12.01.2016. Now, challenging the said judgments, the husband has filed the present second appeals before this Court.

4. The learned counsel for the appellant/husband submitted that the the appellant/husband had filed a petition for divorce on the grounds of mental and physical cruelty as well as desertion. On 14.04.2010, at about



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3.30 p.m., when the appellant was at home, his mother-in-law came to his house along with police and took the respondent/wife stating that his mother-in-law has lodged a complaint as if the appellant confined the respondent/wife and torturing her. Thereafter, the respondent/wife never returned back to home to lead the matrimonial life. The appellant/husband had taken effective steps to bring her back to lead the matrimonial life. But she did not show any interest in joining the appellant/husband. However, the appellant/husband waited for about 2 years and since all the efforts went in vein, he had no other option except to file a petition for divorce on both the grounds of cruelty as well as desertion. Though the respondent/wife admitted that she left the matrimonial home, she has not stated any valid reason as to why she left the matrimonial home.

5. The learned counsel further submitted that the respondent/wife filed a counter and in that counter, she has made some serious allegations against the appellant/husband which are not true and the trial Court has failed to consider that the allegations levelled against the appellant/husband by the respondent/wife had also led him to mental cruelty. The desertion has



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been proved by the appellant/husband. Even the counter and also the cross examination of the respondent/wife clearly show that she has levelled serious allegations against the appellant/husband and both the Courts have failed to consider the said fact. Further, without any intention to join the appellant/husband, the respondent/wife filed the petition for restitution of conjugal rights only as a counter blast for the petition filed by the appellant husband and not with a real intention to lead matrimonial life peacefully with the appellant/husband. Both the Courts have failed to consider the same.

6. The learned counsel also submitted that the respondent wife has not proved that from the date of desertion of the appellant/husband in the year 2010 to till now she had taken any effective steps for reunion with the appellant/husband, which itself would show the intention of the respondent/wife. Even the denial of cohabitation, i.e., long separation alone is a sufficient ground for grant of divorce. Further, the entire allegations levelled by the respondent/wife against the appellant/husband itself would prove that the respondent/wife caused mental cruelty to the



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appellant/husband and the desertion is also without any valid reason and therefore, on both the grounds, the Courts below ought to have granted divorce. Therefore, it warrants interference.

7. In support of the above submissions, the learned counsel placed reliance on the following judgments:

(1) Samar Ghosh Vs. Jaya Ghosh reported in (2007) 4 SCC 511

(2) Vijaykumar Ramchandra Bhate Vs. Neela Vijaykumar Bhate reported in (2003) 6 SCC 334

(3) Sivasankaran Vs. Santhimeenal reported in (2021) SCC OnLine SC 702

(4) Mrs.Anil Sing Vs. Dr.Narender Singh in FAO No.295 of 2000 dated 21.08.2014

(5) R.Thangamani @ Mainavathy Vs. S.Sathishkumar reported in (2017) SCC OnLine Mad 27962



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8. The learned counsel for the respondent/wife submitted that the appellant/husband has failed to prove the grounds taken by him for divorce.

The respondent/wife was ready to live with the appellant/husband for the welfare and interest of the child and she had taken all the efforts for reunion with the appellant/husband and it is only the appellant/husband who evaded to take her back. As averred in the petition for divorce, the respondent/wife had not suppressed her earlier marriage. The appellant/husband married the respondent/wife knowing well that she is a divorcee. The appellant/husband is a drunkard and had illegal intimacy with another woman and that he evaded to live with the respondent/wife and also caused mental as well as physical cruelty on her. Further, he went to the extent of detaining the respondent/wife in the house and he never allowed her come out of the home and that was the reason for the mother of the respondent/wife to lodge a complaint against the appellant/husband and with the help of police, the mother of the respondent/wife took her from the matrimonial home.

9. The learned counsel further submitted that the respondent/wife is a rustic village woman and was bearing all the cruelty caused by the



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appellant/husband and only for the welfare of the child, she expressed her willingness to lead the matrimonial life. Both the Courts below have rightly appreciated the entire materials and dismissed the petitions filed by the appellant/husband. Therefore, there is no merit in the appeals and they are liable to be dismissed.

10. In this case, unfortunately, this Court has not formulated any substantial question of law. Since the appeals have been filed under Section 100 CPC, first of all, this Court has to find out as to whether any substantial question of law arises and if so, the Court has to formulate the substantial question of law and thereafter, have to answer the same.

11. The learned counsel for the appellant/husband submitted that the counter filed by the respondent/wife also form part of the pleadings. The respondent/wife has levelled certain serious allegations against the appellant in the counter statement. But, the respondent/wife has not proved those allegations which are serious in nature and therefore, it amounts to mental cruelty. The trial Court as well as the first appellate Court have failed to



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appreciate the said contention, by ignoring the same and allowed the petition filed by the respondent/wife for restitution of conjugal rights and dismissed the petition for divorce filed by the appellant/husband.

12. The learned counsel for the appellant specifically stated the date and time on which the respondent/wife left the matrimonial home, that too, with the help of police and her mother. Subsequently, the appellant tried to take her back to the matrimonial home. But, she refused to live with him. Even after taking all the efforts for about 2 years to take her back to the matrimonial home, since the respondent/wife refused for reunion with the appellant/husband, the appellant/husband is entitled to divorce on the ground of desertion as the respondent/wife left the matrimonial home without any valid reason.

13. Though the respondent/wife made allegations that she suffered miscarriage due to the physical cruelty caused by the appellant/husband and he has not taken due care, the said allegation was not proved. Further, the allegations made by her in the counter that the appellant/husband was



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leading immoral life with another woman, that he is a drunkard and that he used to consume alcohol and cause physical as well as mental cruelty towards her, were also not proved. Despite the appellant/husband denied in his evidence and has established his case, the trial Court and the first appellate Court have failed to consider that the serious allegations levelled against the appellant/husband were not proved, which itself would show that the respondent/wife caused him mental cruelty. Further, long separation is also one of the valid grounds for cruelty. But, both the Courts below have failed to appreciate the same. Since both the Courts below have failed to appreciate the same, it leads to arising of a substantial question of law.

14. The learned counsel for the respondent/wife submitted that the appellant has not proved the desertion and though the appellant/husband has stated that the respondent/wife made a complaint before the police, the same was also not proved. Since the respondent/wife was ready to live with the appellant/husband, she filed the petition for restitution of conjugal rights. The son is a minor and therefore, for the welfare of the child, the respondent/wife needs to live with the appellant/husband. The allegations



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levelled against the respondent/wife is only to get divorce from her and since those allegations have not been proved, no substantial question of law would arise.

15. Heard the learned counsel for the appellant and the learned counsel for the respondent and perused the records.

16. A perusal of the petition filed by the appellant/husband for divorce shows that he sought divorce on the grounds of desertion and cruelty. It is settled proposition of law that mere desertion is not a ground for divorce unless the petitioner proves that the desertion is without any valid reason. In this case, the appellant has not proved that the respondent/wife left the matrimonial home without any valid reason. In the petition itself, the appellant/husband has stated the specific date and time on which the respondent/wife left the matrimonial home along with his mother-in-law with the help of police. Though he has stated that subsequently he has taken all the steps to take back her to the matrimonial home, he has not given any specific date and time on which he went, along with a common



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man, to take her back to the matrimonial home. There is no evidence to show that subsequently, he filed any application to take back his wife. He has also not produced any document to show that he had sent notice to the respondent/wife asking her to come back to the matrimonial home nor he has examined any independent witness to show that he had taken effective steps to bring her back to the matrimonial home. Therefore, the said statement has not been proved. Under these circumstances, the trial Court has given the finding that the appellant/husband has not proved his allegations as stated in his petition. This Court does not find any perversity in the appreciation of evidence and the given findings. The findings of the trial Court is only based on materials. Therefore, this Court finds that no substantial question of law regarding appreciation of evidence by the trial Court arises.

17. As far as the cruelty is concerned, the learned counsel for the appellant vehemently contended that in the counter, which form part of the pleadings, the respondent/wife has made serious allegations and since that allegations were not proved, it amounts to cruelty. However, a reading of



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the petition filed by the appellant/husband shows that he has not filed the petition for divorce on the ground of cruelty for the said specific reason. Of course, the respondent/wife has not proved the serious allegations levelled against the appellant/husband made by her in the counter statement. But that had not given cause of action to the appellant/husband to file the petition for divorce on the ground of cruelty. The subsequent event has to be taken into consideration only if any of the allegation is proved by the petitioner. When the averments made in the petition has not been proved by the petitioner, the Court need not take into consideration of the subsequent event for cause of action to maintain the application. But it can be taken only as an additional ground. Therefore the contention of the learned counsel for the appellant/husband is rejected.

18. Therefore, this Court finds that there is no perversity in the appreciation of evidence by the trial Court and the trial Court has clearly discussed all the factual aspects and the evidence and dismissed the petition filed for divorce and allowed the petition filed for restitution of conjugal rights.



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19. If there is any perversity in the appreciation of evidence or failure to appreciate any material facts, it would lead to substantial question of law. In the case on hand, all the findings are given only based on facts and materials. Therefore, this Court does not find any perversity in the factual findings given by the trial Court. This Court does not find any substantial question of law to be formulated and answered.

20. Though the learned counsel for the appellant/husband submitted that long separation can also be a ground for getting divorce, as per the appellant/husband, the respondent/wife left the matrimonial home in the year 2010 and he filed the petition for divorce in the year 2013 and that the said petition was dismissed on the same year i.e. on 09.12.2013 itself. Therefore, there is no question of long separation and no occasion has arisen for the trial Court to grant divorce on the ground of long separation and that may not lead to a substantial question of law to be formulated by this Court, since the petition was filed in the year 2013 and the same was disposed on the same year within a period of 6 months. Therefore, the



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appellant/husband is not entitled to get divorce on that ground. The period of pendency of appeal in various Courts for some reasons may not be a ground for a person to get the relief of divorce. Under these circumstances, this Court finds that there is no substantial question of law arises to be answered by this Court.

21. The facts and circumstances of the decisions referred to by the learned counsel for the appellant/husband are different from the present case on hand. Therefore, the decisions referred to by the learned counsel for the appellant/husband are not applicable to the present case on hand.

22. Accordingly, these Civil Miscellaneous Second Appeals are dismissed. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

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Index : Yes / No
Speaking Order: Yes/No
Neutral Citation: Yes/No
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P.VELMURUGAN. J.

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To

1. The III Additional District Judge, Gobichettipalayam
2. The Sub-Court, Gobichettipalayam.
3. The Section Officer,
VR Section,
High Court,
Madras.

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