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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.7.2015

CORAM:

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

CMSA.No.13 of 2011

Dakshinamurthi ... Appellant/Petitioner

Versus

Banu ... Respondent/Respondent

This Civil Miscellaneous Second Appeal is filed under Section 13(1)(i) (a) of Hindu Marriage Act read with Section 100 of C.P.C. against the judgement and decree passed in C.M.A.No.32 of 2007 dated 21.10.2010 on the file of the Court of District Judge, Nagapattinam in confirming the judgement and decree passed in H.M.O.P.No.102 of 2005 dated 02.03,2007 on the file of the Court of Principal Subordinate Judge, Mayiladuthurai..

For Appellant : Mr.A.Muthukumar
For Respondent : Mr.S.Sounthar &
Mr.B.Jawahar

JUDGMENT

The above Civil Miscellaneous Second Appeal has been preferred by the appellant/husband against the dismissal order of his divorce petition in H.M.O.P.No.102 of 2005 passed by the Sub Court, Mayiladuthurai dated 2.3.2007 as confirmed in C.M.A.No.32 of 2007 by the District Judge, Nagapattinam on 21.10.2010. At the time of admission, the following substantial questions of law were framed:

"(a). When the Courts below have found that the respondent had suppressed her eye illness for contracting the marriage with the petitioner. Whether the Courts below erred in law in dismissing the petition for divorce on the ground of cruelty?

(b) Whether the Courts below erred in law in holding that the suppression of material fact namely defect in the respondent's eye sight would not amount to mental cruelty to the petitioner?



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(c) Whether the Courts below erred in law in not following the well established legal principle that fraud avoids all judicial acts and suppression amounts to fraud?

(d) Whether the Courts below erred in law in holding that the petitioner is not entitled to divorce on the ground of desertion when animus desrendi is established?"

2. When the matter is called before this Court today, both the appellant as well as respondent are present and they have categorically stated that the issue between them has been sorted out and they agreed to dissolve their marriage dated 1.9.2003 solemnized between them. The memo of compromise signed by both the parties and counter signed by their respective counsels is filed before this Court.

3. In view of the above development, no useful purpose would be achieved by keeping the matter pending. Therefore, in view of the compromise, by dissolving the marriage dated 1.9.2003, the questions of law are answered in favour of the appellant. The appeal is allowed and the decree of divorce dissolving the marriage dated 1.9.2003 between the appellant and respondent is granted. The memo of compromise shall form part of the decree. The appeal is disposed of. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

vk

To

1.The District Judge, Nagapattinam.

2.The Subordinate Judge, Mayiladuthurai.

+1 cc to Mr.S.Sounthar Advocate sr.38160

+1 cc to M/S.A.MuthuKumar, Advocate sr.38257

C.M.S.A.No.13 of 2011

aa02/11/2015