

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Civil Miscellaneous Appeal No.2827 of 2015

N.Senthil Kumar

... Appellant

vs.

T.B.Praveena

...Respondent

Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, against the judgment and decree dated 07.09.2015 made in I.A.No.50 of 2015 in H.M.O.P.No.24 of 2013 (Sub Court, Ooty) on the file of the learned Family Court, Udhagamandalam.

For Appellant : Mr.N.Manokaran

For Respondent : Mr.K.Jayaraman,
Senior Counsel
for Mr.S.Makesh

J U D G M E N T

S.VAIDYANATHAN, J.

Aggrieved by the exparte decree of divorce dated 07.09.2015 passed by the Family Court, Udhagamandalam in H.M.O.P.No.24 of 2013, the appellant/husband has come up with this appeal, seeking to set aside the same.

2. It is seen from the records that initially, the appellant/husband and the respondent/wife filed a petition for divorce by mutual consent before the Subordinate Judge, Ooty in H.M.O.P.No.6 of 2012. Since the appellant/husband did not appear before the Court, the said petition was dismissed for default on 27.08.2012.

3. According to the respondent/wife, the appellant/husband did not lead a meaningful life with her in order to continue the bond of marriage. Hence, she filed a petition in H.M.O.P.No.24 of 2013 on 29.01.2013 before the Sub Judge, Ooty seeking divorce from the appellant/husband on the ground of cruelty and

desertion. When the said case was taken up for hearing on 17.07.2014, the appellant/husband was called absent and hence, the Original Petition was allowed in favour of the respondent/wife, viz. T.B.Praveena. The order passed in the said petition is extracted hereunder:

"P.W.1 present. Respondent called absent. Respondent counsel reported no instruction. Hence, respondent called absent. Set exparte. P.W.1's evidence and records P.1 to P.5 already on record. Claim proved. Hence, petition allowed."

4. Pursuant thereto, on 05.08.2014, the appellant/husband filed an application in I.A.No.50 of 2015 in H.M.O.P.No.24 of 2013 seeking to set aside the exparte order passed on 17.07.2014 and allow him to contest the petition on merits. By an order dated 07.09.2015, the Family Court, Udhagamandalam, dismissed the said I.A. with the following observation:

"16. ... Even at any stretch of imagination, this Court could not able to think that the petitioner can lead a happy married life with the respondent, who got married again and got a child through the said marriage. In such a circumstance, I am of the view that even if the exparte decree of divorce passed against the petitioner is set aside, no useful purpose would be served and the petitioner cannot possibly live with the respondent in such a scenario. I am of the view that the principles laid down in the above reported judgment relied upon by the learned counsel for the respondent is squarely applicable to the facts and circumstances of this present case.

17. For all the reasons stated above and in light of the principles laid down in the judgment relied upon by the respondent counsel, I am of the considered view that the petitioner has failed to show sufficient cause for his non-appearance on 17.07.2014 when the exparte decree of divorce was passed against him and that he had no bonafide intention in filing this petition and that no useful purpose would be served by setting aside the exparte decree of divorce and hence this petition deserves for dismissal. Thus the point is answered accordingly.

Thus, aggrieved by the dismissal of the said application, the appellant/husband has approached this Court by way of the present appeal, seeking to set aside the same.

5. Learned counsel for the appellant/husband would strenuously contend that the respondent/wife and her counsel were very particular in refusing to receive the notice attempted to be served on them by the appellant/husband with regard to setting aside the exparte decree of divorce and yet, they managed to avoid service of notice till 25.03.2015. Pointing out the hastiness on the part of the respondent/wife in performing the second marriage, he would contend that it is a malafide attempt to deceit the legal right of the appellant/husband to contest the case on merits.

6. On the other hand, learned Senior Counsel appearing on behalf of the respondent/wife would submit that the appellant/husband did not lead a meaningful life with the respondent/wife. Brushing aside all the reasons stated by the appellant/husband, learned counsel would submit that the appellant/husband did not mark his presence in the Court even in H.M.O.P.No.6 of 2012, which was a petition for divorce by mutual consent. According to the learned counsel, when the fact remains that the respondent/wife has remarried and given birth to a child after the decree of divorce, no useful purpose would be served, even if the decree of divorce is set aside.

7. The facts that the marriage between the appellant/husband and the respondent/wife took place on 03.09.2006 and that there was a problem between the husband and wife, which resulted in divorce are not in dispute. The marriage of the respondent/wife with one Santosh on 20.08.2014, pursuant to the divorce from the appellant/husband is also an admitted fact. Though the appellant/husband pleads that he was not given an opportunity to argue his case on merits, it has to be noted that he was not present before the Court even in the petition for divorce by mutual consent. The only grievance of the appellant/husband is that the respondent/wife has hastily married the said Santosh.

8. While dealing with a matrimonial dispute, pragmatic approach is very important. The Court cannot plainly go by the available evidence. The case should be dealt with based on the established facts and circumstances. In this case, though it is apparent that the appellant/husband is inclined to save the marriage with his wife, whether he really intends to live with her peacefully is not known. But, the prevalent situation is otherwise. Admittedly, after 33 days from the date of the decree of divorce, the respondent/wife has married one Santosh, a tea-shop boy near Ootacamund Bus Stand, on 20.08.2014 and has given birth to a female child on 10.12.2014, conceived through the said Santosh, when the first marriage was in existence. It is also seen that the marriage between the respondent/wife and

the said Santosh is duly registered before the Marriage Registrar cum Joint Sub-Registrar II, Udagamandalam.

9. For better understanding of the case, relevant portion of paragraph 6 of the counter filed by the appellant/husband in H.M.O.P.No.24 of 2013 is extracted hereunder:

"6. ... During Jan 2008, the respondent was shocked to know that one K.Santosh, a tea shop boy near the Ootacamund Bus Stand, Son of Krishnan, Thangadu Horanalli Village was trying to befriend the petitioner. After coming to know of the unpleasant and shocking event, the respondent questioned the petitioner which resulted in unnecessary quarrels."

10. Moreover, the respondent/wife has filed an affidavit dated 09.03.2016 before this Court. The said affidavit reads thus:

"1. I state that I got married with the above said appellant herein on 03.09.2006 as per the rites and customs of the Badaga community and Hindu religion.

2. I state that from the day one of the marriage, there were lots of misunderstanding with me and the appellant herein which ends with divorce.

3. I state that as per the custom of our community, our marriage was dissolved by the elders of our community people in the presence of both family members. Hence, we both filed a petition for divorce under mutual consent. Since, the appellant did not appear before the court, the said petition was dismissed for default.

4. I state that thereafter, I filed a petition for divorce HMOP No.24 of 2013 before the Sub Court, Udhagamandalam. In the said petition, the appellant herein entered appearance and since not turned to cross examine me, he was set exparte. Thereafter, I adduced evidence and my petition for divorce was pleased to be allowed on 17.07.2014.

5. I state that after getting the

order from the Court, I got married with one Mr.Santosh on 20.08.2014 and the same has been duly registered before the Marriage Registrar cum Joint Sub-Registrar II, Udagamandalam on the very same day. Further, I state that due to the wedlock with the said Mr.Santosh, I have got a female child namely, Hosanna.

7. I state that the appellant filed the present C.M.A.No.2827 of 2015 as against the I.A.No.50 of 2015 in H.M.O.P.No.24 of 2013 before the Hon'ble High Court and the same is pending. Now, in order to put an end to the issue, I am withdrawing the allegations against the appellant herein and respondent in H.M.O.P.No.24 of 2013. Hence, I most respectfully, pray that this Hon'ble Court may be pleased to record the same and pass orders and thus render justice."

11. On a reading of the affidavit, it is crystal clear that the respondent has started a new lease of life with the said Santosh and the appellant has no reason to interfere in her ways, that too, when there is a decree of divorce between them.

12. In view of the above discussion and as the allegations against the appellant/husband are withdrawn by the respondent/wife, there is no purpose in remanding the matter to the Court below and accordingly, the order dated 07.09.2015 passed by the Court below in I.A.No.50 of 2015, is confirmed.

In fine, the Civil Miscellaneous Appeal stands dismissed. No costs.

s/d-
Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

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To :

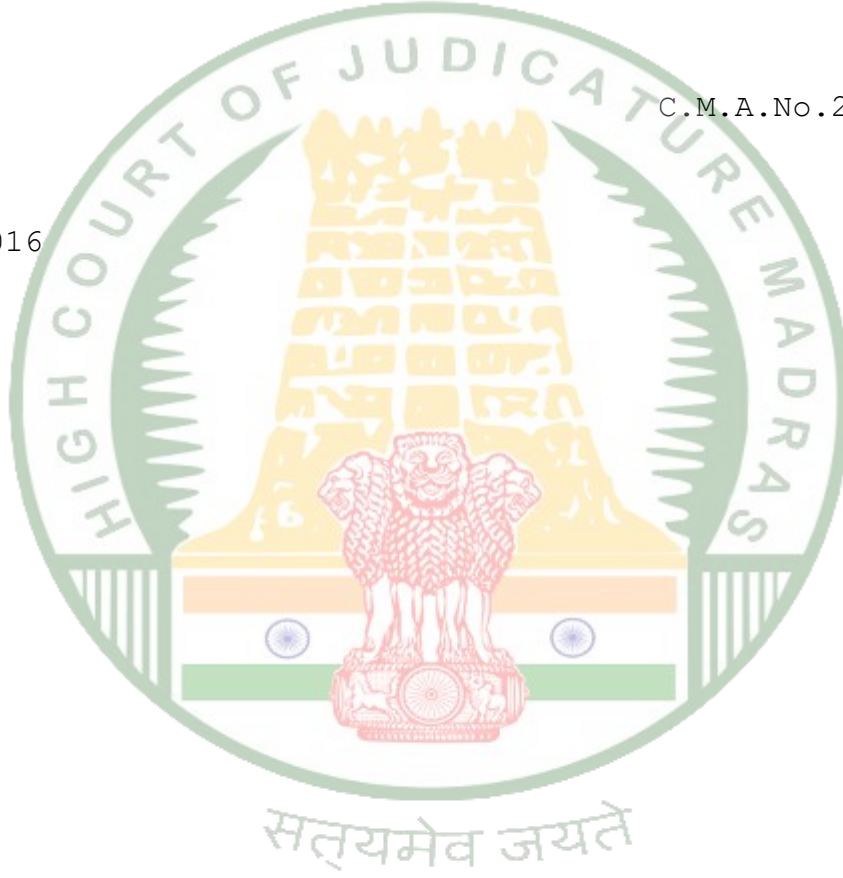
The Sub Judge,
Family Court,
Udhagamandalam.

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The Section Officer,
VR section High Court Madras

+1 cc to M/s.S.Mahesh Advocate sr.17710
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C.M.A.No.2827 of 2015

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