

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2016

C O R A M

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.A .No.1246 of 2006

C.Thiyagarajan .. Appellant /Petitioner

-Vs.-

Renuka .. Respondent/Respondent

Civil Miscellaneous Appeal filed under section 28 of Hindu Marriage Act r/w 19 of Family Court Act against the judgment and decree dated 07.10.2005 passed by the learned Additional District Judge cum Fast Track Court No.I, Chingleput in HMOP No.200 of 2003.

For appellant ... Mr.S.Shanmugavelayutham

For respondent ... Mr.I.Sathish

J U D G M E N T

(Judgment of the Court was delivered
by Pushpa Sathyanarayana,J.)

The husband is the appellant herein, who has challenged the order of dismissal passed by the Court below in the petition filed by him under Section 13(i)(ia) of the Hindu Marriage Act, 1955.

2. The marriage between the appellant and the respondent took place on 10.02.1985. Afterwards, they have been living as husband and wife and begot two children, who have attained majority now.

3. The petition for divorce was filed by the husband on the ground of cruelty, by stating that the wife was suffering from epilepsy. It is alleged in the petition that the respondent/wife very often swoon and she has to be given treatment. It is further alleged that it was the fact that the respondent/wife was suffering from such disease, even prior to the marriage, which was suppressed. It is further stated that

because of the said ailment, the respondent/wife used to behave strangely and often threatened to commit suicide. As this was constantly causing a fear in the mind of the appellant, he has filed the above petition seeking divorce on the ground of mental agony.

4. The respondent/wife had filed her counter denying all the allegations excepting the admitted facts. It is admitted by her that she has been suffering from epilepsy even prior to the marriage, but refused the fact that she has suicidal tendency. It is also stated that she would be normal, if constant medication is administered.

5. Based on the above pleadings, the Court below dismissed the the petition filed by the appellant/husband, finding that there is no acceptable evidence for granting divorce other than the allegation that the wife was suffering from epilepsy.

6. Though originally the Hindu Marriage Act, 1955 under Clause(ii)(c) of Section 5 had listed 'Epilepsy' as one of the grounds for divorce, the words "or epilepsy" in Section 5 have been omitted by the Marriage Laws (Amendment) Act, 1999 (39 of 1999), which came into force with effect from 29.12.1999.

7. Inasmuch as the only ground based on which, the appellant/husband has sought for divorce as against the respondent/wife, is epilepsy, in view of the aforesaid amendment, such a ground is not available to the appellant. The mental agony as alleged by the appellant/husband also is not proved by satisfying evidence as he has not examined anybody, independent of his own testimony, to prove the suicidal tendency of the wife.

8. Therefore, we do not see any ground to interfere with the order of dismissal passed by the Court below. Accordingly, this Civil Miscellaneous Appeal fails and the same is dismissed. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

vj2

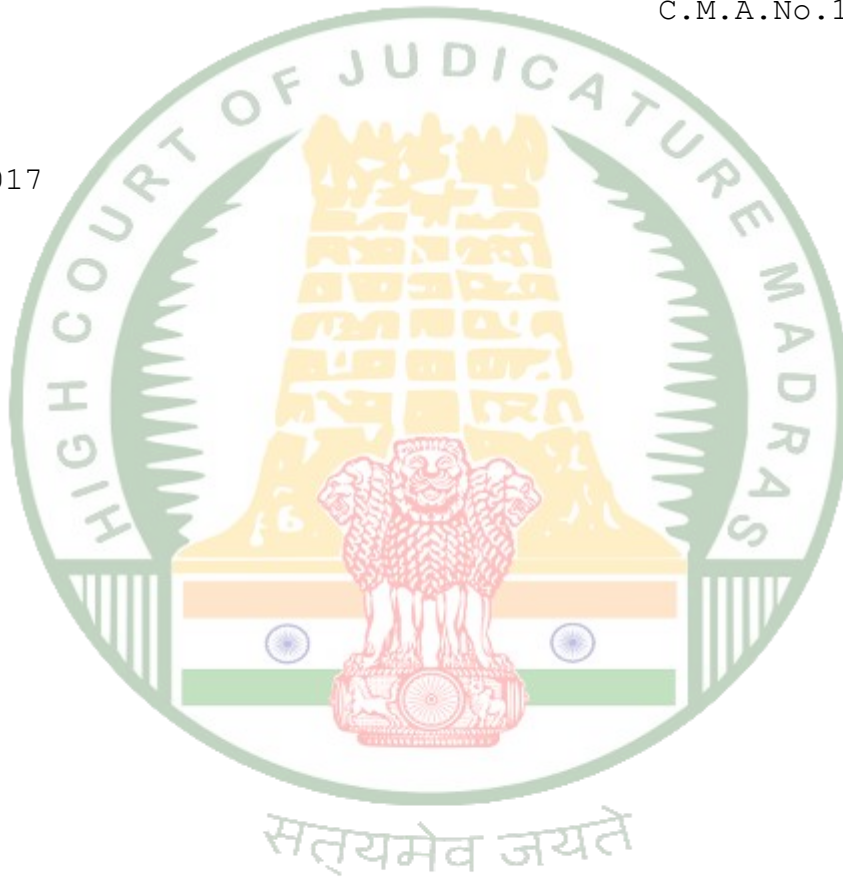
To

The II Additional District Judge
cum Fast Track Court No.I, Chingleput

+1 cc to Mr.I.Sathish Advocate sr 66332

C.M.A.No.1246 of 2006

vd(co)
aa04/01/2017



WEB COPY