



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.01.2016

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.M.S.A.(MD)No.38 of 2015

and

M.P.(MD).No.2 of 2015

K.Gopalram

.. Appellant/Respondent/Respondent/
Petitioner

Vs.

A.Muthumari

.. Respondent/Petitioner/Petitioner/
Respondent

Prayer:- Appeal filed under Section 100 of Code of Civil Procedure r/w Order 9 Rule 13 of Hindu Marriage Act, against the fair and decretal order dated 11.12.2013 and made in C.M.A.11 of 2013 on the file of the learned Principal District Judge, Karur in pursuant to the fair and decretal order made in I.A.No.165 of 2012 on the file of the Sub Court, Karur and the order made in HMOP.129 of 2009 dated 05.01.2013 on the file of the learned Principal Sub Judge, Karur.

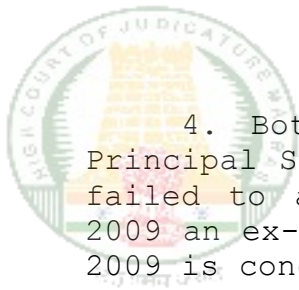
For Appellant : Mr.K.Gopalram
Party-in-person.

JUDGMENT

This Civil Miscellaneous Second Appeal is filed as against the judgment and decree dated 11.12.2013 and made in C.M.A.11 of 2013 on the file of the learned Principal District Judge, Karur.

2. Heard the appellant Mr.K.Gopalram, appearing as party-in-person. Despite service of notice on the respondent, she has not chosen to appear either in person or through her counsel. Therefore she was called absent.

3. It appears from the records that the appellant being the husband of the respondent had taken out a matrimonial proceedings in H.M.O.P.2327 of 2008 on the file of the Family Court, Chennai under Sections 13(1)(ia) and 12 of the Hindu Marriage Act, seeking the relief of divorce and to declare the marriage solemnized between him and the respondent on 28.06.2007 as null and void. Similarly the respondent had also taken out another matrimonial proceedings in H.M.O.P.41 of 2009 on the file of the Family Court, Madurai under Section 9 of the Hindu Marriage Act. When both the above said matrimonial proceedings were pending on the file above said respective courts, a transfer CMP was filed before the Principal Bench of this Court at Chennai. After hearing both sides, both the above said petitions were ordered to be transferred from the file of the above said respective courts to the file of the Sub Court, Karur for disposal on merits and as per law. Accordingly those petitions in H.M.O.P.2327 of 2008 and H.M.O.P.41 of 2009 were re-numbered as HMOP.129 of 2009 and HMOP 131 of 2009 respectively.



4. Both the petitions were taken up for hearing by the learned Principal Sub Judge, Karur on 16.08.2011. On that day, the respondent had failed to appear and therefore insofar as the petition in HMOP.129 of 2009 an ex-parte order was passed. Insofar as the petition in HMOP.131 of 2009 is concerned it was dismissed for non-prosecution.

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5. Thereafter the respondent had filed an application in I.A.No.1 of 2012 under Order 9 Rule 13 of the Code of Civil Procedure, to set aside the ex-parte decree passed in HMOP.129 of 2009. Similarly she had also filed another application in I.A.No.2 of 2012 under Order 9 Rule 9 of the Code of Civil Procedure, to restore her petition in HMOP.131 of 2009. Both petitions were dismissed. Against this order, the respondent had filed two Civil Miscellaneous Appeals viz., C.M.A.11 of 2013 and C.M.A.12 of 2013 on the file of the learned Principal District Judge, Karur. Both Civil Miscellaneous Appeals were consolidated together, heard jointly and disposed of vide a common order dated 11.12.2013.

6. As it appears from the common judgment, it was specifically ordered that both the appeals would be allowed on payment of costs of Rs.1,500/- each directing the appellant therein, who is the respondent herein, to pay this amount on or before 20.12.2013.

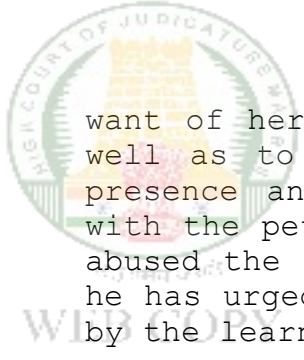
7. The present C.M.S.A.No.38 of 2015 is filed as against the judgment passed in C.M.A.11 of 2013. But no reference is available as to whether the appellant had filed any appeal against the judgment passed in C.M.A.12 of 2013.

8. Insofar as the C.M.S.A.No.38 of 2015 is concerned, the following substantial question of law has been formulated. "Whether the judgment passed by the lower appellate court in C.M.A.No.11 of 2013 is in accordance with law?, if not so, whether it is liable to be set aside?".

9. As afore stated, despite the service of notice on the respondent, she has not chosen to appear. Therefore there is no other go for this Court, except to dispose of this appeal on merits after hearing the argument of the appellant, who is party-in-person.

10. This Court has heard Mr.K.Gopalram, who is the appellant/party-in-person and perused the grounds of the revision.

11. This Court has also perused the common judgment passed in C.M.A.No.11 of 2013 as well as C.M.A.No.12 of 2013. Having been taken into account of the related facts and circumstances narrated in the grounds of the appeal, this Court finds that the appeal itself is deserved to be allowed. In this regard, the appellant/party-in-person has also argued that the respondent had left the appellant in lurch voluntarily and therefore she was not entitled to get the decree of restitution of conjugal rights. Further he has also argued that the decree of divorce granted by the trial court ought to have been confirmed on the ground that the respondent had voluntarily only for the purpose of protracting the matrimonial proceedings had refrained herself from attending the court. He has also pointed out that in the interlocutory applications in I.A.No.1 of 2012 and I.A.No.2 of 2012 for setting aside the ex-parte decree as well as to restore her petition on its original file, she had not chosen to appear and therefore those petitions were dismissed for



want of her presence. If at all she wanted to prosecute her petition as well as to defend the petition filed by him, she would have made her presence and projected her case. Since she was not willing to re-unit with the petitioner and wanted simply to prolong the proceedings, she had abused the process of court by filing petition after petition. Therefore he has urged to allow this appeal after setting aside the judgment passed by the learned Principal District Judge, Karur.

12. Considering the submissions made by the appellant/party-in-person, the substantial question of law is answered as under;

- (a) The judgment passed by the lower appellate court is not in accordance with law.
- (b) The judgment and decree of the lower appellate Court is liable to be set aside.

13. Accordingly, this Civil Miscellaneous Second Appeal is allowed. The judgment and decree passed in the appeal in C.M.A.No.11 of 2013 is set aside. It is clarified that the judgment and decree passed in C.M.A.No.11 of 2013 alone are set aside confirming the order of the trial court. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(AE)

/True copy/

Sub Assistant Registrar

To

- 1.The Principal District Judge, Karur.
- 2.The Principal Sub Judge, Karur.

+1cc to Mr.K.Gopalram, party in person, SR.NO.1711

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and
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