

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2017

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.M.S.A.No.11 of 2017

Kannagi

... Appellant/Respondent/Petitioner

vs.

B.Asokan

... Respondent/Appellant/Respondent

Civil Miscellaneous Second Appeal filed under section 28 of the Hindu Marriage Act R/w U/S 100 of CPC against the Judgment and Decree dated 06.08.2009 in H.M.C.M.A.No.4 of 2007 on the file of learned Principal District Judge, Vellore, Vellore District reversing the judgment and decree dated 24.02.2006 made in HMOP.No.48/2002 on the side of the subordinate Judge, Arani, Thiruvannamalai District.

For Petitioner : Mr.P.Jagadeesan
For Respondent : Mr.R.Vasudevan

JUDGMENT

The appellant, who is the wife of the respondent, has filed the above Civil Miscellaneous Second Appeal challenging the judgment and decree passed in H.M.C.M.A.No.4 of 2007, on the file of Principal District Court, Vellore, reversing the order passed in H.M.O.P.No.48 of 2002 on the file of Sub Court, Arni.

2. The appellant filed the Original Petition in H.M.O.P. No.48 of 2002 for restitution of conjugal rights. In the said Original Petition, the respondent filed counter claim for divorce on the ground of cruelty.

3. The Trial Court dismissed the counter claim and decreed the Original Petition in H.M.O.P. No.48 of 2002 for restitution of conjugal rights.

4. Against the order passed by the Trial Court, respondent-husband filed an appeal in H.M.C.M.A.No.4 of 2006 on the file of Principal District Court, Vellore.

5. The Lower Appellate Court, reversed the order passed by the Trial Court and passed a decree for divorce in favour of the respondent-husband.

6. Against the judgment and decree passed by the Lower Appellate Court, the wife has filed the above Civil Miscellaneous Second Appeal.

7. Mr. R. Vasudevan, learned counsel appearing for the respondent entered appearance in C.M.P.No.2 of 2011 in C.M.S.R.No.41858 of 2010 and submitted that the parties had settled the matter out of Court and they are living together.

8. When the matter is taken up for hearing, Mr. P. Jagadeesan, learned counsel appearing for the appellant and Mr. R. Vasudevan, learned counsel appearing for the respondent submitted that the parties had settled the matter out of Court and also entered into a joint memorandum of compromise dated 16.03.2017. The learned counsel appearing for the respondent further submitted that the respondent is suffering from Squamous Cell Carcinoma, Mandible (cancer) and is taking treatment at Saveetha Medical College Hospital and is in the Intensive Care Unit.

8. The appellant is present in Court and she acknowledged the due execution of the joint memorandum of compromise. The joint memorandum of compromise has been signed by the learned counsel on either side. The respondent has also signed the joint memorandum of compromise, which is also attested by Dr. Pradeep, who is an Associate Professor and in-charge of Saveetha Medical College Hospital. The Doctor has also given his certificate stating that the respondent is admitted in the Intensive Care Unit in the hospital.

9. The learned counsel on either side submitted that the appellant and the respondent are living together and therefore, they entered into a joint memorandum of compromise dated 16.03.2017. The learned counsel on either side also submitted that the respondent has no objection for allowing the above Civil Miscellaneous Second Appeal and for setting aside the judgment and decree passed by the District Court, Vellore in H.M.C.M.A.No.4 of 2007.

10. In view of the submission made by the learned counsel on either side, the joint memorandum of compromise dated 16.03.2017 is taken on record. The judgment and decree passed by the Principal District Court, Vellore in H.M.C.M.A.No.4 of 2007 are set aside. The order passed by the Sub Court, Arani in

H.M.O.P.No.48 of 2002 is restored. The appeal in Civil Miscellaneous Second Appeal stands allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Rj

To

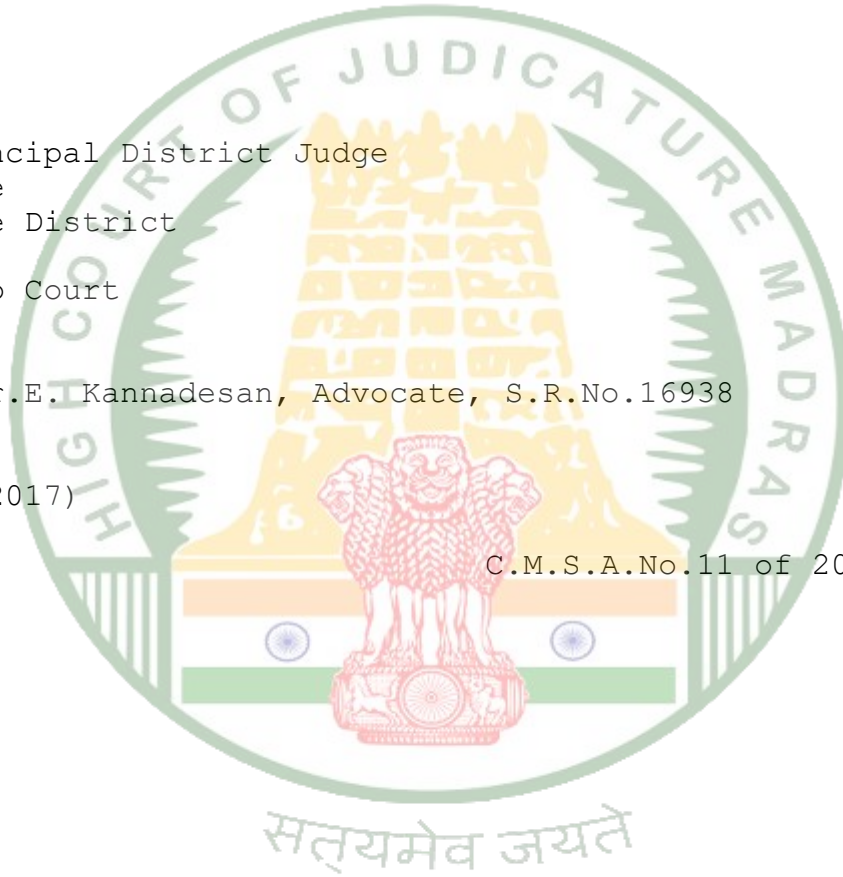
1.The Principal District Judge
Vellore
Vellore District

2. The Sub Court
Arani

+lcc to Mr.E.Kannadesan, Advocate, S.R.No.16938

NRJK(CO)
md(17/04/2017)

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