

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE P. VELMURUGAN

Civil Miscellaneous Appeal Nos. 2416 and 2417 of 2016

S. Kala @ Deivanai ... Appellant in both the appeals

Versus

M. Rathinasamy ... Respondent in both the appeals

C.M.A. No. 2416 of 2016:- Appeal filed under Section 19 of the Family Courts Act against the Fair and Final Order dated 24.03.2016 passed in H.M.O.P. No. 485 of 2014 on the file of Family Court, Erode.

C.M.A. No. 2417 of 2016:- Appeal filed under Section 19 of the Family Courts Act against the Fair and Final Order dated 24.03.2016 passed in H.M.O.P. No. 356 of 2014 on the file of Family Court, Erode.

For Appellant : Mr. S. Kaithamalai Kumaran
in both the appeals

For Respondent : Mr. M. Guruprasad
in both the appeals

COMMON JUDGMENT

(Judgment of the Court was delivered by R. SUBBIAH, J)

These appeals are filed by the wife/appellant aggrieved by the order dated 24.03.2016 passed in HMOP No. 485 of 2014 and HMOP No. 356 of 2014 on the file of Family Court, Erode. By the said order dated 24.03.2016, the Family Court allowed HMOP No. 356 of 2014 filed by the husband/respondent under Section 9 of The Hindu Marriage Act for restitution of conjugal rights and dismissed HMOP No. 485 of 2014 filed by the wife/appellant under Section 13 (1) (i-a) of The Hindu Marriage Act for dissolution of the marriage solemnised between the appellant and the respondent on 05.07.2012.

2. The marriage between the respondent and the appellant was solemnised on 05.07.2012 at Arulmighu Velayudhasamy Temple, Thindal, Erode District as per Hindu rites and customs. Due to serious matrimonial dispute, the appellant left the matrimonial home on 18.01.2013. After exchange of notice, the respondent has filed HMOP No. 356 of 2014 for restitution of conjugal rights. On notice, the appellant has filed a counter affidavit resisting the Petition filed by the respondent for restitution of conjugal rights. That apart, the appellant has also filed HMOP No. 485 of 2014 for dissolution of the marriage dated 05.07.2012.

3. Before the Family Court, in HMOP No. 356 of 2014, the respondent examined himself as PW1 and marked Exs. P1 to P10. On behalf of the appellant, she examined herself as RW1 but no document was marked. In HMOP No. 485 of 2014, the appellant examined herself as PW1 along with two other witnesses as Pws 2 and 3 and Exs. P1 to P7 were marked. On behalf of the respondent, he examined himself as RW1 but no document was marked. The Family Court, after analysing the oral and documentary evidence, allowed the petition for restitution of conjugal rights filed by the respondent while dismissing the petition filed by the appellant for divorce.

4. When the above appeals were listed for hearing, this Court, by order dated 26.09.2016, referred the above appeals to the Tamil Nadu Mediation and Conciliation Centre attached to this Court for exploring the possibility of a settlement. Accordingly, the appellant and the respondent have appeared before the Mediation Centre for settlement of the disputes. After mutual discussion, the appellant and the respondent have agreed to settle the matrimonial dispute and it was also recorded by the Tamil Nadu Mediation and Conciliation Centre attached to this Court in the report dated 23.01.2017. The compromise recorded before the Mediation Centre was duly signed by the appellant, respondent and their respective counsel. The report dated 23.01.2017 reads as follows:-

"Both sides, out of their own volition and without any pressure or coercion from any side have agreed as follows:-

1. Both the parties agreed for divorce by a written agreement dated 26.12.2016

2. Both the parties agreed that there will be no claims on either side

3. As per the agreement, jewels were handed over by the wife to the husband in presence of the Mediators and their respective counsels

4. Both the parties had settled all the financial claims as found in the agreement dated 26.12.2016.

5. The Compromise Agreement signed by both the parties, by the respective attestors form part of the Settlement before the Mediation

6. As per the terms of compromise, a decree of divorce shall be grnated by this Honourable Court."

5. Pursuant to the Compromise entered into between the appellant and the respondent before the Tamil Nadu Mediation and Conciliation Centre attached to this Court, as mentioned above, these appeals are listed before this Court for recording the compromise.

6. Today, the learned counsel for the appellant as well as the respondent reiterated and confirmed the compromise entered into between the appellant and the respondent before the Mediation Centre and prayed this Court to dismiss the appeals with liberty to the parties to file appropriate Petition before the competent Court for dissolution of the marriage by mutual consent, as contemplated under Section 13 (B) of The Hindu Marriage Act.

7. Having regard to the above submission of the counsel for both sides and the settlement entered into between the parties, we confirm the Fair and Final Order dated 24.03.2016 passed in H.M.O.P. No. 485 of 2014 and H.M.O.P. No. 356 of 2014 on the file of Family Court, Erode. Consequently, both the appeals are dismissed. No costs. Liberty is given to the appellant and the respondent to file appropriate petition seeking a decree of divorce by mutual consent as contemplated under Section 13 (B) of The Hindu Marriage Act. We make it clear that in the event of a petition being filed by the appellant and the respondent under Section 13-B of the Hindu Marriage Act before the Family Court for divorce by mutual consent, in view of the peculiar circumstances involved in the case, the Family Court shall consider the same and pass orders therein without waiting for the cooling period of six months to get over.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

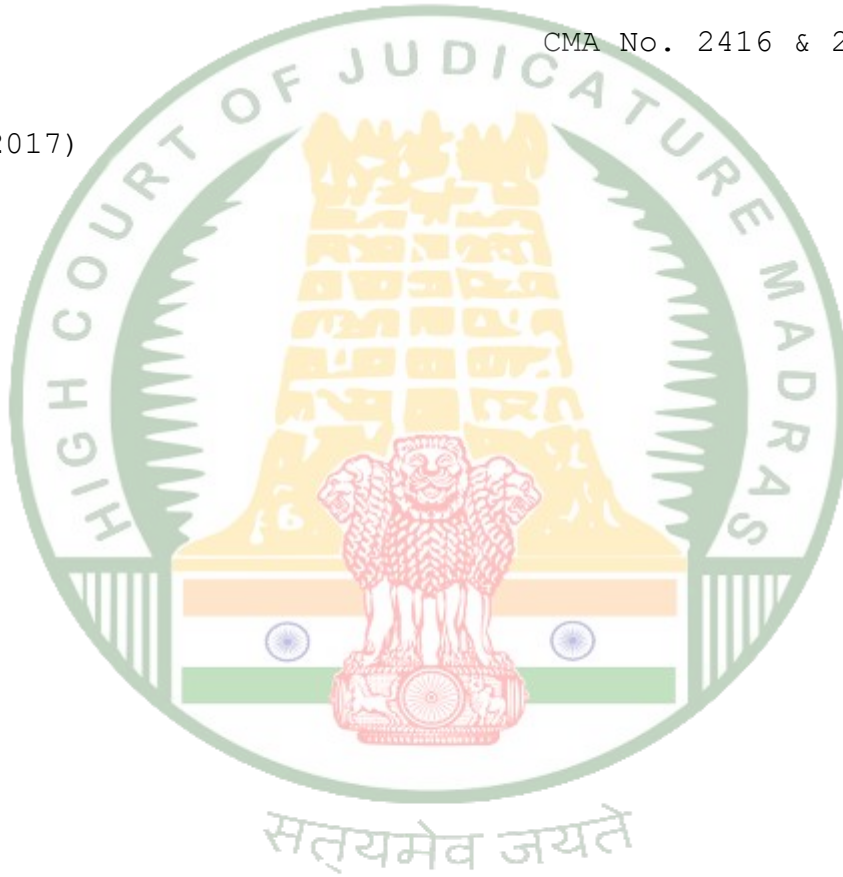
To

The Presiding Officer
Family Court
Erode

+1 CC to Ms.M. Guruprasad, advocate sr 68528.
+1 CC to Ms.A.K. Kumarasamy, advocate sr 67899.

CMA No. 2416 & 2417 of 2016

NRI (CO)
SP(11/12/2017)



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