

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2017

Coram

The Hon'ble Mr. Justice A.SELVAM
and
The Hon'ble Mr. Justice P.KALAIYARASAN

C.M.A.No.2829 of 2016
and
C.M.P.No.20501 of 2016

M.Shriraman .. Appellant

Vs

M/s.Padmapriya .. Respondent

Civil Miscellaneous Appeal preferred against the judgment and decree dated 17.08.2016, passed in O.P.No.1838 of 2009, on the file of III Additional Principal Family Court, Chennai.

For Appellant ... Mr.D.Rajagopal

For Respondent ... No appearance

JUDGMENT

(Judgment of the Court was delivered by A.SELVAM, J.)

This Civil Miscellaneous Appeal has been directed against the order dated 17.08.2016, passed in O.P.No.1838 of 2009, by the the III Additional Family Court, at Chennai.

2. The appellant herein, as petitioner, has filed O.P.No.1838 of 2009, under Sections 13(1)(ia) and (i-b) and also under Section 26 of the Hindu Marriage Act, 1955, wherein, the present respondent has been arrayed as sole respondent.

3.It is averred in the petition that the marriage between the petitioner and respondent has been solemnized on 01.02.2004 at Tirupathi, as per Hindu Rites and Custom and both of them have been blessed with a son by name Sri Krishna. Further it is averred in the petition that of late, the respondent has used to torture the petitioner on various grounds without any sufficient cause and further, the respondent has deserted the petitioner without reasonable cause during January 2007. Under the said circumstances, this petition has been

filed praying to dissolve the marriage dated 01.02.2004 held between the petitioner and respondent and also for getting custody of minor son by name, Sri Krishna.

4. In the counter filed on the file of the respondent it is averred to the effect that the marriage between the respondent and petitioner has been performed on 01.02.2004 at Tirupathi as per Hindu Rites and Custom. It is true to allege that both of them have been blessed with a son. But it is false to aver that the respondent has used to torture the petitioner. Further it is averred that the petitioner has not taken proper interest either upon the son or upon the respondent. The petitioner has used to torture the respondent. Under the said circumstances, she left the matrimony home. Subsequently, she filed O.P.No.769 of 2009 under Section 9 of the Hindu Marriage Act, 1955 for getting restitution of conjugal rights and subsequently, she has withdrawn the same. Under the said circumstances, there is no merit in the petition and the same deserves to be dismissed.

5. The trial Court, on the basis of divergent contentions raised on either side and also on the basis of both oral and documentary evidence, has allowed the petition in part and thereby dissolved the marriage between the petitioner and respondent held on 01.02.2004, but dismissed the petition in respect of custody of minor son by name, Sri Krishna. Against the disallowed portion, the present civil miscellaneous appeal has been preferred, at the instance of the petitioner, as appellant.

6. The respondent has been served with summons, but appearance has not been made. Under the said circumstances, this civil miscellaneous appeal is disposed of on merits on the basis of available materials on record and also on the basis of the arguments advanced on the side of the appellant/petitioner.

7. The learned counsel appearing for the appellant/petitioner has sparingly contended to the effect that the marriage between the petitioner and respondent has been performed on 01.02.2004 in accordance with the Hindu Rites and Custom and both of them have been blessed with a son and very often, the respondent has used to torture the petitioner and during January 2007, the respondent has left the matrimonial abode without reasonable cause and despite of best efforts taken by the petitioner, the respondent has not turned up. Under the said circumstances, the present petition has been filed for getting the relief sought therein. But the trial Court has allowed the same only in respect of dissolution of marriage and dismissed the same in respect of custody of minor son by name Sri Krishna and therefore, the dismissal order passed by the

trial Court is liable to be set aside and the Original Petition No.1838 of 2009 is liable to be allowed in toto.

8.It is seen from the records that the marriage between the petitioner and respondent has been performed on 01.02.2004 at Tirupatti in accordance with the Hindu Rites and Custom. It is an admitted fact that both of them have been blessed with a son by name, Sri Krishna. In O.P.No.1838 of 2009, two reliefs have been sought for. The first and foremost relief is to dissolve the marriage between the petitioner and respondent held on 01.02.2004 on the grounds of cruelty and desertion. The second relief sought therein is to direct the respondent to handover custody of the minor son to the petitioner.

9.It is an admitted fact that the trial Court has allowed the petition only in respect of the relief of dissolution of marriage, but dismissed the petition in respect of the relief of custody of minor son.

10.As mentioned supra, even though the respondent has been served with summons, appearance has not been made. Further it is seen from the records that now the minor son has attained the age of 10.

11.Considering the fact that the appellant/petitioner is the natural guardian of minor son, viz., Sri Krishna and also considering that he has already attained the age of 10, this Court is of the view that the appellant/petitioner is a proper person to maintain the said minor.

12.Further, this Court on various dates has passed various orders and thereby directed the respondent to handover custody of the minor son to the appellant/petitioner. Despite of specific interim orders passed by this Court to the effect mentioned supra, the respondent has failed to comply with the same. On that ground also, the respondent can be directed to handover custody of the minor son to the petitioner/appellant/father.

In fine, this Civil Miscellaneous Appeal is allowed. The dismissal order passed by the trial Court with regard to custody of minor son viz., Sri Krishna in O.P.No.1838 of 2009 is set aside and O.P.No.1838 of 2009 is allowed in toto without costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

msk

To

1.The III Additional Principal Family Court,
Chennai.

2.The Section Officer
VR Section High Court,

+1 cc to M/s.D.Rajagopal Advocate sr71829

C.M.A.No.2829 of 2016

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