

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal Nos.3304 and 3305 of 2011
and
MP.NO.1 OF 2011

M.P.Singaravelu
S/o.C.Palanivelu .. Appellant in both appeals

Vs

Jothilakshmi
D/o.K.Gopinathan .. Respondent in both appeals

Civil Miscellaneous Appeals filed u/s.19 of the Family Courts Act, 1984, against the common order of learned II Additional Judge, Family Court, Chennai, passed in O.P.Nos.1477 of 2007 and 2883 of 2006 on 12.07.2011.

For Appellant : Mr.K.Ethiraj
For Respondent : Mr.D.Ramalingam
for Ms.Sudha Ramalingam

C O M M O N J U D G M E N T

[Judgment of the Court was made by C.T.SELVAM, J.]

These appeals arise against the common order of learned II Additional Judge, Family Court, Chennai, passed in O.P.Nos.1477 of 2007 and 2883 of 2006 on 12.07.2011.

2. Appellant and respondent are husband and wife. O.P.No.2883 of 2006 on the file of learned II Additional Judge, Family Court, Chennai, has been filed by respondent/wife seeking dissolution of marriage on the ground that the marriage between appellant and respondent has not been consummated. O.P.No.1477 of 2007 on the file of learned II Additional Judge, Family Court, Chennai, has been filed by appellant/husband seeking restitution of conjugal rights. Court below, under common order dated 12.07.2011, allowed the petition filed by respondent/wife and dismissed the petition filed by appellant/husband. Against

such order, the present appeals have been filed.

3. Heard learned counsel for appellant and learned counsel for respondent.

4. Learned counsel for appellant/husband submitted that Court below fell into error in informing that husband had not taken any steps for medical test regards his potency and therefore, wrongly drawn the presumption of the marriage having not been consummated. Learned counsel submits that in the very counter filed in O.P.No.2883 of 2006, appellant/husband has submitted as follows:

'20. At this juncture it is respectfully submitted that still he loves the petitioner and he wants the petitioner for his family hold. The respondent is not an impotent and any scientific tests if required to prove the same he is ready to undergo for the tests if this Hon'ble Court directs the respondent for the same.'

5. Heard learned counsel for respondent on the above submissions, who submits that the fact of the marriage not having been consummated has not been disputed by appellant/husband.

6. Considering the rival submissions, this Court is of the view that given the categorical submission of appellant/husband that he is willing to undergo a test regards his potency, it would be wrong to presume from non-consummation of marriage that appellant/husband is impotent. At the same time, it is seen that non-consummation of marriage is not disputed and the parties have parted ways in the year 2007. They having been apart for such a long period and efforts at mediation between them having failed, the irrefutable finding would be one of irretrievable break down of marriage. While confirming the finding in both orders under challenge, we would inform the reason for doing so as irretrievable break down of marriage.

The Civil Miscellaneous Appeals are dismissed. The common order of learned II Additional Judge, Family Court, Chennai, passed in O.P.Nos.1477 of 2007 and 2883 of 2006 on 12.07.2011 is confirmed. No costs. Consequently MP.No. 1 of 2011 in CMA.No.3305 of 2011 is closed.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

gm

To

The II Additional Judge,
Family Court,
Chennai.

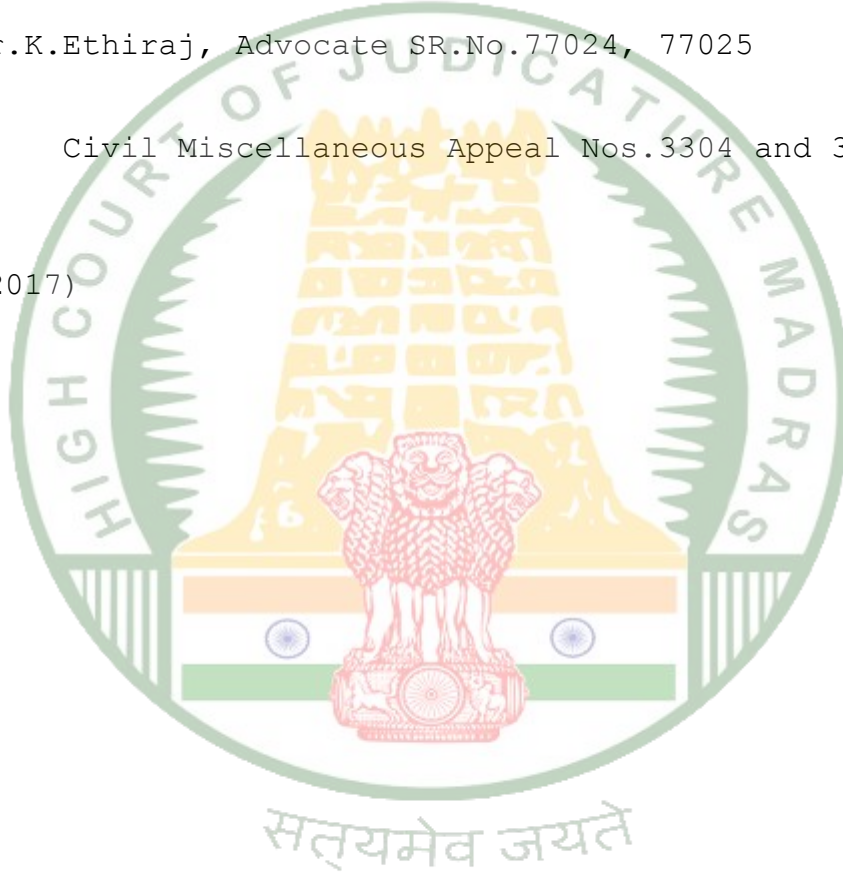
Copy To

The Section Officer,
VR Section, High Court,
Madras.

+2cc to Mr.K.Ethiraj, Advocate SR.No.77024, 77025

Civil Miscellaneous Appeal Nos.3304 and 3305 of 2011

SS(CO)
GN(08/12/2017)



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