

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.09.2016
DELIVERED ON : 27.04.2017

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

C.M.S.A.Nos.2 and 3 of 2016
and
C.M.P.No.692 of 2016

K.Vijayakumar Appellant in both appeals

vs.

Gowri Respondent in both appeals

Civil Miscellaneous Appeals filed under Section 28 of the Hindu Marriage Act, 1955 r/w Section 100 of the Civil Procedure Code praying to set aside the common order and decree passed by learned I Additional District and Sessions Judge, Vellore, in H.M.C.M.A.Nos.2 and 3 of 2014 on 30.04.2015 and to restore the judgment and decree passed by learned Subordinate Judge, Vellore, in H.M.O.P.Nos.279 and 263 of 2010 on 22.01.2013.

Appearance (in both appeals)

For Appellant : Mr.V.Srikanth

For Respondent : Mr.V.Raghavachari

WEB COPY
COMMON JUDGMENT

As the parties are common in both appeals and the same question is raised for consideration in them, they can be disposed of by a common judgment.

2. Appellant and respondent are husband and wife. Differences arose between them and they are living separately. Respondent/wife filed H.M.O.P.No.263 of 2010 on the file of

learned Subordinate Judge, Vellore, Vellore District, seeking restitution of conjugal rights. Petitioner/husband filed H.M.O.P.No.279 of 2010 on the file of learned Subordinate Judge, Vellore, Vellore District, seeking divorce.

3. Before the trial Court, appellant/husband has examined himself and marked four exhibits. On the side of respondent/wife, three witnesses were examined and fifteen exhibits were marked. Court below, under a common order dated 22.01.2013, held that the parties are living separately over 11 years and hence, no purpose would be served by allowing the existence of marriage between them and accordingly, allowed the divorce petition and dismissed the petition for restitution of conjugal rights. Thereagainst, respondent/wife moved H.M.C.M.A.Nos.2 and 3 of 2014 on the file of learned I Additional District and Sessions Judge, Vellore, Vellore District. Appellate Court, under common judgment dated 30.04.2015, has held that the wife was turned out by husband without any reasonable excuse and he had failed to prove cruelty said to have been committed by wife and accordingly, set aside the decree of divorce and allowed the petition seeking restitution of conjugal rights. Against such judgment, the present Civil Miscellaneous Second Appeals have been filed.

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

5. Learned counsel for appellant contended that the respondent withdrew from the conjugal relationship as early as on 11.08.2001 without informing any reason for her so doing. She had moved a petition for restitution of conjugal rights after nine years on 02.11.2010. Learned counsel submitted that after prolonged desertion, respondent had made allegations of torture having been suffered by her without any material to substantiate the same. Respondent repeatedly had threatened of committing suicide and was thus guilty of cruelty. Trial Court had the advantage of examining the demeanor, both of the appellant and respondent and had also rightly appreciated the direct evidence of appellant regards the occurrence on 10.08.2011 when respondent attempted to commit suicide. Appellate Court had erroneously set aside the well-reasoned findings of the trial Court.

6. Learned counsel for respondent submitted that she had been subjected to much humiliation since she had not mothered a child. Respondent/wife was the first to knock at the doors of Court. Appellant/husband had never thought of the alleged acts of respondents as desertion or cruelty. It is only as a counter blast to respondent/wife's petition seeking restitution of conjugal rights that petitioner/husband had sought divorce. Even

in the petition seeking restitution of conjugal rights, respondent had not made any allegations against appellant/husband. Appellant/husband has not spoken to any quarrel. He has only said that respondent/wife tried to commit suicide. Respondent/wife is a teacher at a private school and she could not be so if she was given to suicidal tendencies.

7. This Court would observe that the mere fact of appellant/husband not having approached Court till such time respondent sought restitution of conjugal rights cannot be read against him. Such position can only be seen as his being comfortable with letting things be. When after a prolonged period the respondent/wife has sought restitution of conjugal rights, appellant/husband was left with no alternative but to seek divorce.

8. Orders were reserved in the matter on 02.09.2016. Learned counsel on either side requested that orders not be pronounced for a period of three months towards probing avenues of rapprochement between parties. This Court had waited for over six months and posted the matter 'for being mentioned' on 21.03.2017. This Court has been informed that there has been no meeting ground. Marriage between the parties irretrievably has broken down.

In the result, the judgment of learned I Additional District and Sessions Judge, Vellore, passed in H.M.C.M.A.Nos.2 and 3 of 2014 on 30.04.2015 is set aside and the judgment of learned Subordinate Judge, Vellore, passed in H.M.O.P.Nos.279 and 263 of 2010 on 22.01.2013 is restored. Connected miscellaneous petition is closed. No Costs.

Sd/-

सत्यमेव जयते
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gm

To

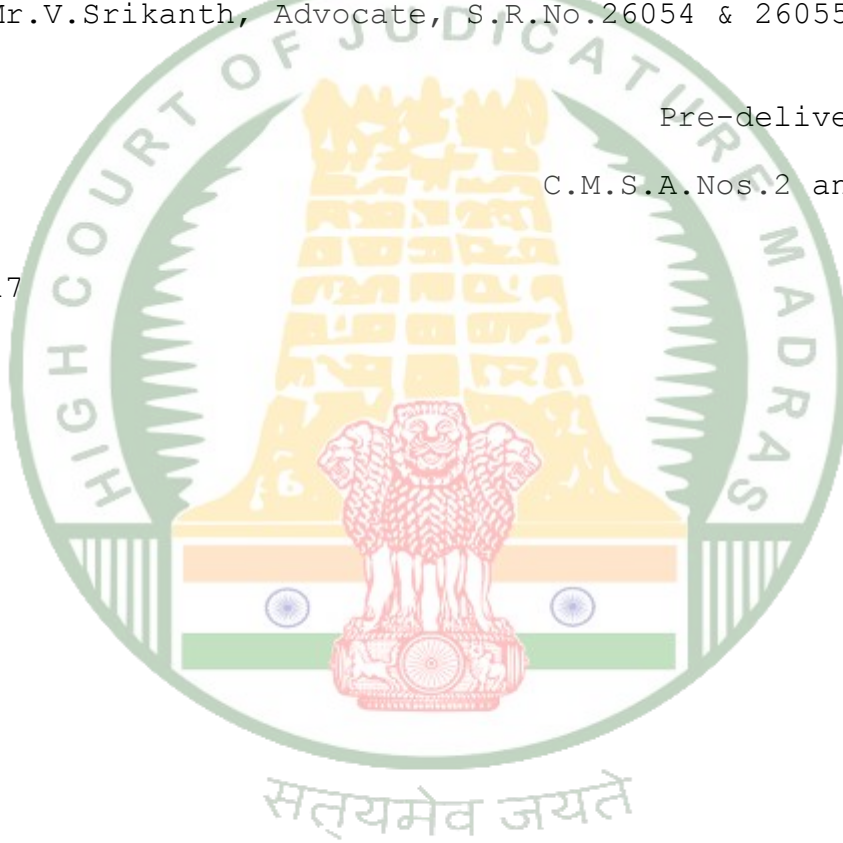
1. The I Additional District and Sessions Judge,
Vellore.
2. The Subordinate Judge,
Vellore.
3. The Section Officer,
VR Section, High Court,
Madras.

+2ccs to Mr.V.Raghavachari, Advocate, S.R.No.25614 & 25615

+2ccs to Mr.V.Srikanth, Advocate, S.R.No.26054 & 26055

Pre-delivery Judgment
in
C.M.S.A.Nos.2 and 3 of 2016

KJI (CO)
CS/02/06/17



WEB COPY