

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.1025 of 2012
and
M.P.No.1 of 2012

Mrs.Santhi

..
Appellant/Respondent

- Vs -

P.Krishnan

..
Respondent/Petitioner

Prayer:- Civil Miscellaneous Appeal filed u/s.19 of the Family Court Act, against the judgement and decree dated 04.03.2011 made in F.C.O.P.No.333 of 2009 on the file of the Family Court, Salem.

For Appellant : V.Perarasu

For Respondent : M/s.Karan & Uday

JUDGMENT

[Judgement of the Court was delivered by C.T.SELVAM, J.]

This Civil Miscellaneous Appeal arises against the judgement and decree dated 04.03.2011 made in F.C.O.P.No.333 of 2009 on the file of the Family Court, Salem.

2. Appellant and respondent are husband and wife. Respondent/husband moved F.C.O.P.No.333 of 2009 on the file of learned Judge, Family Court, Salem, seeking dissolution of marriage on the ground of cruelty and desertion u/s.13(1) (ia) (ib) of The Hindu Marriage Act. Court below, under order dated 04.03.2011, allowed the said petition and granted dissolution of marriage on the ground of cruelty and desertion. There against, the present appeal has been filed by appellant/wife.

3. Heard learned counsel for appellant and learned counsel for respondent and perused the materials on record.

4. Learned counsel for respondent/husband submits that respondent/husband, has in F.C.O.P.No.333 of 2009 specifically averred that appellant/wife used to quarrel with him for no reason. It is further contended that appellant/wife used to ill-treat the respondent/husband by abusing him in filthy language in the presence of friends, elders and relatives. It was the specific contention of the respondent that appellant/wife used to throw whatever was available at him and assaulted him. While seeking relief of dissolution of marriage, respondent/husband made reference in para IX of the petition to settlement arrived at between appellant and respondent in the presence of elders of both the parties. According to respondent, even though the appellant had received a sum of Rs.72,500/- towards permanent alimony as a pre-condition for grant of divorce, after receipt of the amount, she refused to file a petition under Section 13(b) of Hindu Marriage Act for a decree of divorce by mutual consent. This was also recorded by Family Court, Salem in the impugned order.

5. Respondent/husband, during the course of his examination as PW-1, has specifically stated that pursuant to a compromise entered into between him and appellant herein, he paid a sum of Rs.72,500/- before Lok Adalat and it was also recorded. In the cross-examination of appellant/RW-1, she has also admitted that she has received the amount of Rs.72,500/- towards maintenance as per the award. She has also admitted that she was ready to consent to a decree of divorce by mutual consent.

6. Family Court, allowed separation of the couple, as the matrimonial life between them was strained and it had also broken down irretrievably beyond repair.

7. In such circumstances, when the appellant herein has received a sum of Rs.72,500/- before Lok Adalat and came forward to file a petition for dissolution of marriage by mutual consent, it is not open for her to resile from such assurance and to contest the O.P filed by the respondent herein before Family Court. Even otherwise, we find from the records that the son born to the appellant and the respondent was 17 years old at the time when the respondent/husband filed O.P. before the Family Court and now he is aged 25. Therefore, this is not a case where the possibility of re-union should be explored by this Court in the interest of the son born to the couple, as the son is now major. Further, on a perusal of the evidence available on record, it is seen that the appellant and respondent are residing separately for the past 22 years.

8. Under such circumstances, this Court finds no reason to interfere with the conclusion arrived at by the Family Court.

9. The Civil Miscellaneous Appeal is dismissed. The judgment and decree dated 04.03.2011 on the file of Family Court, Salem passed in F.C.O.P.No.333 of 2009 is confirmed. No costs. Connected miscellaneous petitions are closed.

s/d-

Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

kmi

To

1. The Judge,
Family Court,
Salem.
2. The Section Officer,
V.R.Section,
High Court,
Madras-104. (2 copies)

+1 CC to Mr.V. Perarasu, Advocate sr 78645.

+1 CC to M/s. Karan & Uday, Advocate sr 78833.

सत्यमेव जयते

CMA.No.1025 of 2012

PA (CO)
SP(12/02/2018)

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