



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2017

CORAM

THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.M.S.A.No.10 of 2003

S.Thambuswamy .. Appellant/Appellant/Petitioner

vs

Vanmathi .. Respondent/Respondent/Respondent

Prayer: Civil Miscellaneous Second Appeal filed under Section 13(1) of Hindu Marriage Act, 1955 r/w 100 of the Code of Civil Procedure against the judgment and decree dated 29.11.2002 passed by the learned Principal District Judge, Nagapattinam in CMA No.51 of 2002 in confirming the order and decree dated 12.04.2002 passed by the learned Principal Subordinate Judge, Mayiladuthurai in HMOP No.80 of 1997.

For Appellant : Mr.N.Mani Narayanan
For Respondent : Mr.K.R.Ramesh Kumar

JUDGMENT

The above Civil Miscellaneous Second Appeal has been filed by the husband, in a matrimonial dispute, against the judgment and decree dated 29.11.2002 passed by the learned Principal District Judge, Nagapattinam in CMA No.51 of 2002 in confirming the order and decree dated 12.04.2002 passed by the learned Principal Subordinate Judge, Mayiladuthurai in HMOP No.80 of 1997.

2. For the sake of convenience, the parties are referred to hereunder as husband and wife.

3. The gist of the case would run thus:

(i) The appellant, who is the husband, has filed HMOP No.80 of 1997 before the learned Principal Subordinate Judge, Mayiladuthurai for annulling the marriage solemnized between him and the respondent/wife on 19.02.1995.

(ii) According the husband, he is a Doctor by profession and the marriage between him and the respondent/wife was performed in Mayiladuthurai. The wife was an active politician before the marriage. It is stated that on the date of nuptial, the husband found that the wife was suffering from a skin disease and that she was advised to take treatment in Thanjavur. She refused for the same and had left for her



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parents house without the consent of the husband and thereafter, returned two to three days later. Though it was agreed by her that she will not continue in politics, after marriage, she has been indulging in political activities, even after the marriage. According to the husband during March 1995, she had left the matrimonial home and thereafter, not returned. Therefore, the husband had issued notice, for which, the wife had sent a reply with untenable allegations of illicit relationship by the husband with one Kamala Devi. As the wife had wilfully deserted the appellant/husband and levelled untenable allegations, causing mental agony, divorce was sought for by the husband.

(iii) The said petition was resisted by the respondent/wife by giving a reply denying all the allegations made in the petition. The wife had alleged that even prior to the marriage, the husband was having relationship with one Kamala Devi and when the same was questioned, he had taken away the gold and silver jewellery along with the house hold articles and vacated the house in Mayiladuthurai. The wife was waiting till 01.11.1996 under the fond hope that the husband would return to the matrimonial home. As he did not come back, he was confronted by the parents of the husband. In response, the husband threatened the wife to vacate the house. He also threw away the articles belonging to the wife and also physically assaulted her. Therefore, she sought for the dismissal of the divorce petition contending that the same has been filed on false averments.

(iv) Before the trial court, the husband had marked Exs.A1 to A14 and the wife had marked Exs.B1 to B16 and both of them examined themselves as PW1 and RW1 respectively. Based on the averments and consideration of the exhibits marked on either side, the trial court had dismissed the petition filed by the husband seeking annulment of marriage.

(v) Challenging the same the husband/appellant herein filed an appeal in CMA No.51 of 2002 before the Principal District Judge, Nagapattinam for nothing but to be dismissed confirming the order passed by the trial court.

(vi) Aggrieved by the same, the above Civil Miscellaneous Second Appeal has been filed.

4. When the matter came up for admission, this Court had framed the following substantial questions of law:

a. In a petition for divorce on the ground of cruelty, whether the court is legally right in holding that the allegations made in counter would not amount to cruelty?

b. Whether the Courts below are legally right in rejecting claim based on facts and allegations made prior to the proceeding and during proceedings?



c. Whether the courts below are legally right in rejecting the case based on desertion on the ground that date of desert was not given?

5. Heard both sides and perused the orders passed by both the Courts below.

6. On a perusal of the judgment passed by the learned Principal District Judge, Nagapattinam, it is seen that the learned Judge has held that though the husband had alleged that the wife had deserted him resulting in mental agony and cruelty, had categorically found that the allegations set out in the divorce petition were not proved by any evidence. The documents Exs.A1 to A14 are only the communication and correspondences and there is nothing to show that the wife had wilfully deserted him without just and sufficient cause, which in turn, caused cruelty to the husband. Whereas the learned Trial Judge had discussed the letters written by the husband to the said Kamala Devi in Exs.A3, A4, A5, A7, A9 and A11 and found that there has been relationship between the husband and the said Kamala Devi and with respect to the allegation that the husband only had deserted the wife by vacating the house, it has stated that there is no specific evidence to that effect. The courts below have concurrently found that the said act of the husband to vacate the house and be away from his wife was only to create a ground for divorce on the ground of desertion. However, it is also found by the learned Appellate Judge that there is no continuous period of two years of desertion by the wife prior to the filing of the divorce petition, for grant of divorce. Therefore, on the said ground, it was rejected.

7. With respect to the act of cruelty, as there is no evidence and specific instances mentioned by the appellant/husband, the said ground was also rejected by both the Courts below.

8. In view of the above factual discussion, I do not find any infirmity in the concurrent finding given by both the courts below, warranting interference in this Civil Miscellaneous Second Appeal. Though this Court has framed the aforementioned questions of law for consideration, no question of law much less substantial question of law arise for consideration.

9. In the result, the Civil Miscellaneous Second Appeal fails and the same is dismissed. No costs.

Sd/-
Assistant Registrar(CS II)

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Sub Assistant Registrar



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- To
1. The Principal District Judge, Nagapattinam
 2. The Principal Subordinate Judge, Mayiladuthurai
- + 1 cc to M/s. K.R. Rameshkumar, Advocate Sr.16402

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