

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.2702 of 2012

A.Samuel Dilip
S/o.Athirstadoss .. Appellant/Petitioner

Vs

Goldie Sarah
D/o.George Kanagaraj Appadurai .. Respondent/Respondents

Civil Miscellaneous Appeal filed u/s.19 of the Family Courts Act, 1984, against the judgment of learned II Additional Principal Judge, Family Court, Chennai, passed in O.P.No.530 of 2006 on 18.02.2009.

For Appellant :Mr.A.V.Somasundaram
for Ms. Lakshmi Priya Associates
For Respondent :Mr.N.A.Kareem

J U D G M E N T

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

This Civil Miscellaneous Appeal arises against the judgment of learned II Additional Principal Judge, Family Court, Chennai, passed in O.P.No.530 of 2006 on 18.02.2009.

2. Appellant and respondent are husband and wife. Appellant moved O.P.No.530 of 2006 on the file of learned II Additional Judge, Family Court, Chennai, seeking dissolution of marriage on the ground of cruelty and adultery u/s.10(1)(i)(x) of the Indian Divorce Act, 1869. Court below, under orders dated 18.02.2009, dismissed such petition. There against, the present appeal has been filed.

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

4. In Ex.P2, legal notice dated 29.04.2005 caused by respondent, there is a specific imputation of the marriage having not been consummated. The falsity of such imputation has been admitted by respondent in the course of her cross-

examination and in the face of medical records marked as Ex.P9, which informed her having undergone termination of pregnancy. Ex.P2 contains a further averment to the following effect:

'5. You are giving more importance than any other relationship in the world to your childhood friend Dr.John Benjamin who is still a bachelor and sharing all your leisure time and wasting your working day time also.

My client could not understand the mystery behind your deep attachment with your boy friend as you hardly find time to spend with her.'

In the view of this Court the allegation of non-consummation of marriage and imputing impotency of appellant as the cause and that of his sharing a mysterious relationship with his boy friend i.e., imputing an immoral relationship, amount to cruelty and Court below has erred in brushing aside such imputations lightly. Court below has also failed to see that allegation of non-consummation of marriage falsely has been made. Appellant and respondent have now lived apart for over 20 years. Therefore, there hardly would be any room for reconciliation. In fact, it is admitted by both sides that a suit in O.S.No.1001 of 2005 on the file of learned I Assistant Judge, City Civil Court, Chennai, was preferred by the father and brothers of respondent against their wrongful eviction from the premises owned by appellant. Learned counsel on either side are in agreement that the same was not pressed. Learned counsel for respondent would add that it became unnecessary to do so since the respondents family members vacated the premises. The submission of learned counsel for respondent is that PW-2, sister of appellant, had, in cross, admitted to there being no major disputes between parties except for one over the premises belonging to appellant which was in the occupation of respondents family members. Such submission does not impress us. As found herein above, imputations made by respondent amount to acts of cruelty and as such, appellant is entitled to an order of dissolution of marriage on the ground of cruelty.

The Civil Miscellaneous Appeal shall stand allowed. The judgment of learned II Additional Principal Judge, Family Court, Chennai, passed in O.P.No.530 of 2006 on 18.02.2009, shall stand set aside. The marriage solemnized between the petitioner and respondent on 12.05.1997 is hereby dissolved by granting a decree of divorce. No costs.

-s/d-

Assistant Registrar(CS-II)

True Copy

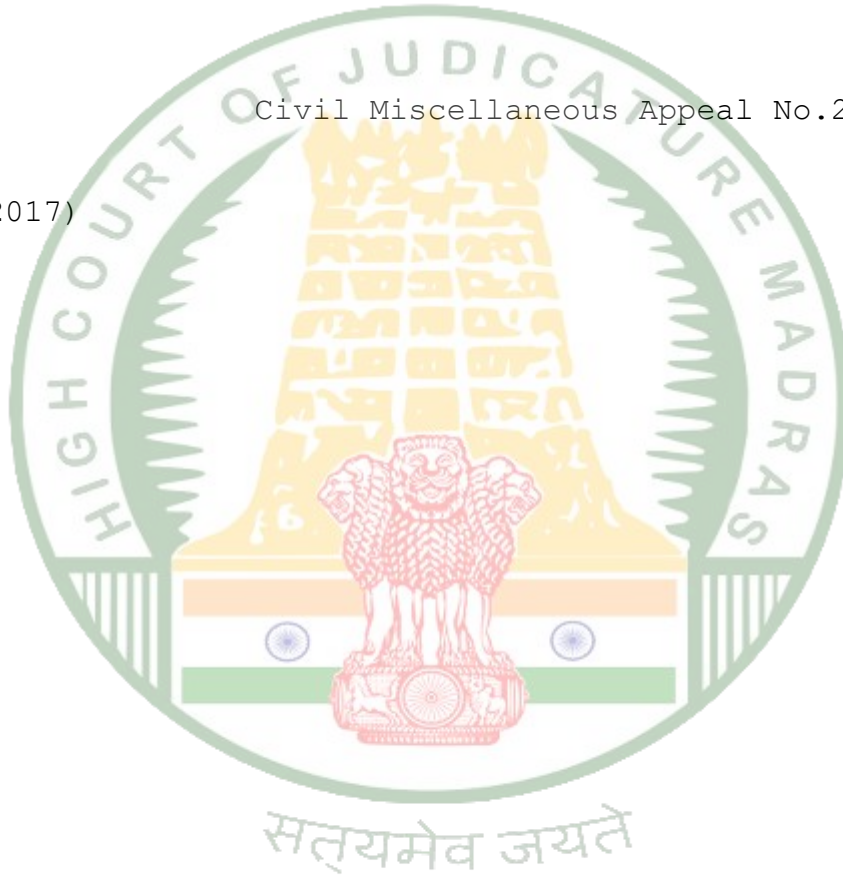
Sub-Assistant Registrar

gm
To

1. The II Additional Principal Judge,
Family Court,
Chennai.
 2. The Section officer
VR Section, High Court, Madras.(2 copies)
- +1 CC to Ms. Lakshmi Priya Associates sr 75246.

Civil Miscellaneous Appeal No.2702 of 2012

KJI(CO)
SP(22/12/2017)



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