

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE P. VELMURUGAN

Civil Miscellaneous Appeal Nos. 872 and 873 of 2007

Vijaymohan ... Appellant in both the appeals

Versus

D. Kalamani ... Respondent in both the appeals

C.M.A. No. 872 of 2017:- Appeal filed under Section 19 of the Family Courts Act against the Judgment and Decree dated 21.09.2006 passed in H.M.O.P. No. 495 of 2004 on the file of Family Court, Coimbatore.

C.M.A. No. 873 of 2017:- Appeal filed under Section 19 of the Family Courts Act against the Judgment and Decree dated 21.09.2006 passed in H.M.O.P. No. 335 of 2004 on the file of Family Court, Coimbatore.

For Appellant : Mrs. S. Karpagavarthini
in both the appeals

For Respondent : Mr. K. Selvakumar
for Mr. T.R. Rajaraman
in both the appeals

COMMON JUDGMENT

(Judgment of the Court was delivered by R. SUBBIAH, J)

The appellant is the husband and the respondent is the wife. The appellant has filed the present appeals as against the Common Judgment and Decree dated 21.09.2006 passed in H.M.O.P. No. 495 of 2004 and H.M.O.P. No. 335 of 2004 on the file of Family Court, Coimbatore. By the common Judgment dated 21.09.2006, the Family Court, Coimbatore dismissed HMOP No. 335 of 2004 filed by the appellant under Section 13 (1) (i-a) of The Hindu Marriage Act for dissolution of the marriage solemnised between him and the respondent on 31.05.1993 and allowed HMOP No. 495 of 2004 filed by the respondent under Section 9 of The Hindu Marriage Act for restitution of conjugal rights.

2. The marriage between the appellant and the respondent was solemnised on 31.05.1993 as per Hindu rites and customs. Citing several instances relating to matrimonial dispute, the appellant filed HMOP No. 335 of 2004 before the Family Court,

Coimbatore for dissolution of the marriage, which was resisted by the respondent by filing a counter. Thereafter, the respondent filed HMOP No. 495 of 2004 for restitution of conjugal rights.

3. In order to prove the averments contained in the respective petition filed by the appellant and the respondent, the appellant examined himself as PW1 and marked Exs. P1 to P6. On behalf of the respondent, the respondent examined herself as RW1 and marked Exs. R1 to R4. The Family Court, after scanning the oral and documentary evidence, concluded that the dispute between the appellant and the respondent is trivial and it can be resolved by mutual discussion. Accordingly, the Family Court, Coimbatore by the common Judgment dated 21.09.2006 dismissed the petition filed by the appellant for dissolution of the marriage and allowed the petition filed by the respondent for restitution of conjugal rights.

4. When the appeals are listed today for hearing, the learned counsel for the appellant and the respondent brought to the notice of this Court that the appellant and the respondent have settled matrimonial their dispute by entering into a Memo of Compromise dated 18.09.2017. A copy of the Memo of Compromise has been produced to this Court, which was duly signed by the appellant, respondent and their respective counsel. The Memo of Compromise dated 18.09.2017 reads as follows:-

"It is submitted that the appellant/husband herein filed H.M.O.P. No. 335 of 2004 for divorce and the respondent/wife herein filed H.M.O.P. No. 495 of 2004 for restitution of conjugal rights before the Hon'ble Family Court, Coimbatore. That the Hon'ble Family Court allowed the HMOP No. 495 of 2004 filed by the respondent/wife for restitution of conjugal rights and dismissed the H.M.O.P. No. 335 of 2004 filed by the appellant/husband for divorce. Aggrieved by the said orders, the appellant herein filed two appeals i.e., C.M.A. No. 872 of 2007 against the order passed in H.M.O.P. No. 495 of 2004 (for restitution of conjugal rights) and C.M.A. No. 873 of 2007 against the order passed in H.M.O.P. No. 335 of 2005 (for divorce).

It is submitted that the marriage between the appellant/husband and respondent/wife took place on 31.05.1993 and the appellant and the respondent have been living separately from 20.08.1993 and there is no possibility of reunion. And the appellant and respondent do not have any children and they do not have any financial dependency against each other. And they have been living separately for more than 24 years.

It is submitted that the C.M.A. No. 873 of 2007 is filed by the appellant/ husband herein to set aside the order of dismissal passed in the H.M.O.P. No. 335 of 2004 to grant divorce. The

respondent has no objection for disposing the appeal bearing C.M.A. No. 873 of 2007 against H.M.O.P. No. 335 of 2004 and by grant of divorce dissolving the marriage held between them on 31.05.1993 as the appellant and respondent have arrived at a compromise. It is further submitted that the respondent herein has no objection in disposing the C.M.A. No. 872 of 2007 against H.M.O.P. No. 495 of 2004 (Restitution of conjugal rights)

It is submitted that this Honourable Court may be pleased to record the terms of compromise entered into between the appellant/husband and respondent/wife herein and dispose the C.M.A. No. 873 of 2007 (for divorce) and C.M.A. No. 872 of 2007 (against the order of restitution of conjugal rights) and grant divorce and thus render justice.

5. In the light of the compromise entered into between the appellant and the respondent, as mentioned above, the learned counsel for both sides prayed this Court to grant a decree of divorce.

6. We are not inclined to accept such submission made by the counsel for both sides for granting a decree of divorce in terms of the compromise memo entered into between the appellant and the respondent by setting aside the Judgment and Decree passed by the Family Court, Coimbatore. However, having regard to the above submission of the counsel for both sides and the settlement entered into between the parties, we confirm the Judgment and Decree dated 21.09.2006 passed in H.M.O.P. No. 495 of 2004 and H.M.O.P. No. 335 of 2004 on the file of Family Court, Coimbatore. Consequently, both the appeals are dismissed. No costs. Liberty is given to the appellant and the respondent to file appropriate petition seeking a decree of divorce by mutual consent as contemplated under Section 13 (B) of The Hindu Marriage Act before the competent Family Court having jurisdiction. We make it clear that in the event of a petition being filed by the appellant and the respondent under Section 13-B of the Hindu Marriage Act before the Family Court for divorce by mutual consent, in view of the peculiar circumstances involved in the case, the Family Court shall consider the same and pass orders therein without waiting for the cooling period of six months to get over.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

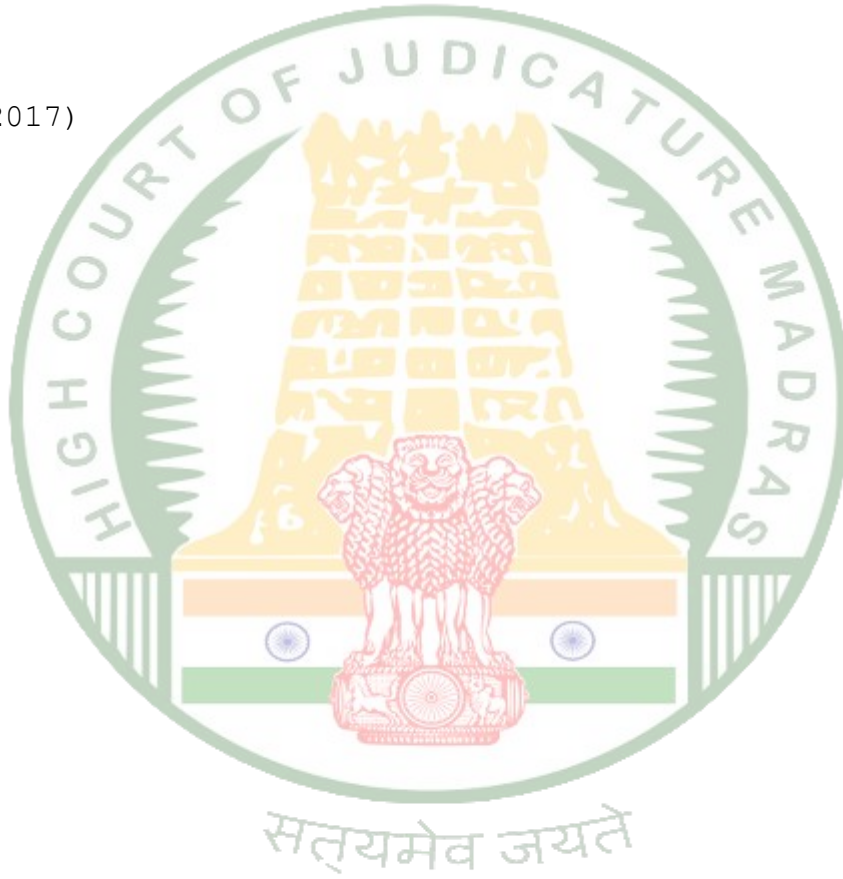
To

The Presiding Officer
Family Court,
Coimbatore.

+ 2 ccs to Mr. T.R. Rajaraman, Advocate SR.68693 & 68692
+ 2 ccs to M/s. G. Kamala, Advocate Sr.68602

CMA No. 872 and 873 of 2007

GP(CO)
EU(26/10/2017)



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