

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 08.08.2017****CORAM:****THE HONOURABLE MR.JUSTICE M.M.SUNDRESH****and****THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR****C.M.A (MD) No.978 of 2016****and****C.M.P (MD) No.8773 of 2016**

G.R.Vijaysukumaran

... Appellant

vs.

Rajakumari

...Respondent

PRAYER: Appeal filed under Section 19 of Family Court Act, to pass an order to allow this appeal and setting aside the order dated 27.04.2016 made in I.A.No.90/15 in H.M.O.P.No.466 of 2014 by the Family Court, Madurai.

For Appellant

: Mr.R.Ramasamy

For Respondent

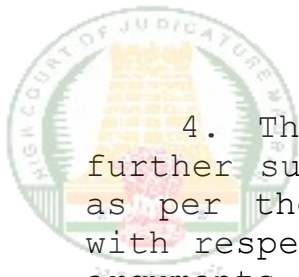
: Mr.R.Suriyanarayanan

JUDGMENT

The petitioner herein filed H.M.O.P. No.466 of 2016 for divorce on 30.09.2014 and an exparte decree order was passed, as the respondent, despite the notice, did not turn up. Alleging that she was kept in dark and summons have not been served, I.A.No.90 of 2015 was filed by her and the said application was allowed. Hence, present Civil Miscellaneous Appeal has been filed by the petitioner.

2. The learned counsel appearing for the petitioner would submit that even as per the affidavit filed in support of the application seeking to set aside the exparte decree, the respondent has stated that she was living in the very same premises till 12.09.2014 and the summons were indeed served on the aforesaid address. Therefore, a presumption has arisen that she was served.

3. It is further submitted that the reasoning, adopted by the learned Trial Judge, cannot be accepted with respect to the signature found in the summons. This can be seen from the sale deed executed by her on 21.11.2005, in which, being a purchaser she has signed as Rajakumari Sugumaran.



4. The learned counsel appearing for the petitioner would further submit that the said document could not be marked because as per the recording made by the learned Judge such contention with respect to the manner of signature was raised only during the arguments.

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5. The learned Counsel appearing for the respondent would submit that what has been ordered is only a petition to set aside an exparte decree, which prevents the petitioner from getting a decree on merits. Hence, no interference is required.

6. Considering the submissions made, we are of the view that the matter requires to be remitted back to the Court below to have a re-look after permitting the parties to let in evidence both in oral and documentary. The Trial Court has not taken into consideration of the affidavit filed by the respondent and had no occasion to peruse the document dated 21.11.2005.

7. Accordingly, the Civil Miscellaneous Appeal is allowed and the order passed by the Family Court, Madurai in I.A.No.90 of 2015 stands set aside and the matter is remitted back to the learned Family Court Judge, Madurai for fresh consideration. The learned Judge is directed to permit the parties to let in evidence both oral and documentary in support of their respective submissions. The parties are directed to mark the sale deed dated 21.11.2005. The said application has to be disposed of within a period of eight weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To

The Judge
Family Court, Madurai.

RM/TA

VB/MR/KKR/SAR4/23.08.2017/2P/2C

**C.M.A(MD) No.978 of 2016
and**

C.M.P(MD) No.8773 of 2016