

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.10.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.S.A.No.45 of 2008

Perumal Pillai

... Appellant/Appellant/
Petitioner

Vs.

Meenakshi

... Respondent/Respondent/
Respondent

Civil Miscellaneous Second Appeal is filed under Section 24 (1) of the Hindu Marriage Act, against the Judgment and Decree of the Principal District Court at Villupuram dated 22.01.2008 in C.M.A.No.14 of 2006, confirming the Judgment and Decree of the Subordinate Judge's Court at Kallakurichi dated 06.09.2006 in H.M.O.P.No.21 of 2002.

For Appellant : M/s.Aiyshwarya
For M/s.Sarvabhauman Associates

For Respondent : Mr.K.A.Ramakrishnan

ORDER

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree of the Principal District Court at Villupuram dated 22.01.2008 in C.M.A.No.14 of 2006, confirming the Judgment and Decree of the Subordinate Court at Kallakurichi dated 06.09.2006 in H.M.O.P.No.21 of 2002.

2. The brief facts of the case as stated by the petitioner in his affidavit is that the petitioner had married the respondent, namely, Meenakshi, on 26.01.1996 at Sankarapuram Taluk, Nathamedu Village, as per Hindu rites. Both of them were living together happily and out of the wedlock, a female child, namely, Jeyavalli, was born to them. The petitioner was working as a conductor under the Tamil Nadu Government Transport Corporation and he used to work in night shift also. Utilising his absence during the night, the respondent wife developed illegal intimacy with one Kaliyappillai Selvam who is living in the same Village. When the petitioner came to know about the

said fact, he advised the respondent wife, despite the same, the respondent wife continued her relationship with the said person and later, deserted the petitioner. Further, the respondent wife, in order to hide her illegal intimacy with the person Kaliyappillai Selvam, gave a complaint against the person Kaliyappillai Selvam at Kallakurichi Police Station in Crime No.579/2001 and it was registered under Section 376 and 506 (ii) I.P.C. Though the appellant/petitioner has requested the respondent wife to come and live with him, the respondent wife refused to live with him, and therefore, the appellant/petitioner filed a petition in H.M.O.P.No.21 of 2002 on the file of Subordinate Court, Kallakurichi, seeking for divorce.

3. Denying the allegations of the petitioner, the respondent wife filed a counter before the Subordinate Court, Kallakurichi, by contending that it is true that the petitioner had married her on 26.01.1996 and thereafter, a female child was born to them. But, the respondent wife never had illegal intimacy with the said person Kaliyappillai Selvam and only the appellant/petitioner had illegally treated the respondent wife by compelling her to give consent for second marriage as he disliked her, and further assaulted her and drove her out from the matrimonial home. Hence, sought for dismissal of this appeal.

4. Before the Lower Court, on the side of the petitioner, P.W.1 and P.W.2 were examined and Exs.P1 to P3 were marked. On the side of the respondent, R.W.1 to R.W.4 were examined and Ex.R1 was marked. The Lower Court, after considering the oral and documentary evidence, by order dated 06.09.2006, dismissed the H.M.O.P.No.21 of 2002 filed by the appellant/petitioner as there was no sufficient documents or witnesses on the side of the appellant to prove his case regarding the illegal intimacy of the respondent wife.

5. As against the order of the Lower Court, the petitioner preferred an appeal before the Appellate Court, namely, the Principal District Judge, Villupuram in C.M.A.No.14 of 2006. But, the Appellate Court also dismissed the appeal filed by the appellant/petitioner by its Judgment and Decree dated 22.01.2008 on the same ground that there is no direct evidence to prove the illicit intimacy of the respondent wife.

6. On perusing the materials available on record and the Judgment of the Principal District Court, Villupuram, dated 22.01.2008, it could be seen that the appellant/husband has not placed any material or evidence to prove his case that the respondent wife had committed adultery with the person Kaliyappillai Selvam. Further, when the appellant has taken a stand that the respondent wife had committed adultery, he has

not chosen to made any appropriate person as a party to the proceedings to prove and establish his case. Moreover, it could be seen from the records that when the appellant has taken a stand that only the respondent wife had voluntarily deserted him and living separately for more than a year, he has not chosen to send any notice to the respondent wife before filing the divorce petition. Further, none of the evidences have proved that the appellant called the respondent wife to live with him, but, she voluntarily deserted him and living separately. So, in the absence of any material to show the illegal intimacy and desertion by the respondent wife, the petition for dissolving the marriage cannot be considered. In view of the above, this Court is not inclined to interfere with the Judgments of the Courts below.

7. Accordingly, this Civil Miscellaneous Second Appeal is dismissed and the Judgment and Decree of the Principal District Judge, Villupuram dated 22.01.2008 passed in C.M.A.No.14 of 2006 and the Judgment and Decree of the Subordinate Judge, Kallakurichi dated 06.09.2006 passed in H.M.O.P.No.21 of 2002 are confirmed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

raja

To

1. The Principal District Judge,
Villupuram.
2. The Subordinate Judge,
Kallakurichi.

+1cc to M/s.Sarvabhauman Associates, Advocate, S.R.No.69064

+1cc to Mr.K.A.Ramakrishnan, Advocate, S.R.No.68997

C.M.S.A.No.45 of 2008

PPA(CO)
CS/08/08/2019