

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.01.2018

Pronounced on :24.01.2018.

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

C.M.A.No.1889 of 2015
and M.P.No.1 of 2015

R.Mala ... Appellant / 1st Respondent

Vs.

1. D.Srinivasan ... 1st Respondent / Petitioner
2. Muthukumar ... 2nd Respondent / 2nd Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 19 of Family Courts Act, 1984, to set aside the order and Decree, dated 09.07.2015 in F.C.O.P.No.36 of 2015 on the file of the Family Court, Chengalpattu and consequently dismiss F.C.O.P.No.36 of 2015 and allow the Civil Miscellaneous Appeal.

For Appellant : Ms.Anitha Arunkumar
for Mr.S.Selvathirumurugan

For Respondents : Mr.S.N.Ravikumar for R1
No Appearance for R2

JUDGMENT

(Judgement of the Court was delivered by P.KALAIYARASAN, J)

This Civil Miscellaneous Appeal has been filed by the wife against the order of the Family Court, Chengalpet, dated 09.07.2015 in F.C.O.P.No.36 of 2015 granting divorce by allowing the said petition filed by the husband.

2. It is averred in the petition that the marriage between the petitioner and the first respondent, who is the appellant herein was solemnized on 26.03.1997 and out of the wedlock, two daughters were born and misunderstanding developed between the petitioner and the first respondent, as she developed illicit intimacy with the second respondent. The petitioner / husband left the first respondent on 20.09.2006 and the first respondent did not look after the husband as dutiful wife, when he met with an accident and sustained grievous injuries. The husband sent legal notice on 20.09.2010, for which the first respondent has not replied.

3. The appellant / first respondent in her counter denied all the allegations made against her by the husband in his petition. The marriage and the birth of two children out of the wedlock are admitted. The possession of inferior complex coupled with suspicious character of the husband is the root cause for separation. She did not have any connection with the second respondent as alleged by the petitioner except the fact that the second respondent is the co-employee. Right from the marriage, she behaved as a dutiful wife to the petitioner. She never caused any mental cruelty or did any act against law and moral ethics.

4. On the side of the petitioner / husband, the petitioner was examined as P.W.1 and 6 Exhibits were marked. On the side of the respondents, there was no oral or documentary evidence.

5. The trial Court after analysing the averments and evidence both oral and documentary, granted divorce. Aggrieved by the order, the first respondent / wife as appellant has come forward with this Civil Miscellaneous Appeal.

6. The learned counsel appearing for the appellant contends that the husband has not established the allegation of adultery and in the absence of any proof, order of divorce passed by the trial Court is erroneous and therefore, the order is liable to be set aside.

7. The learned counsel appearing for the first respondent per contra contends that the first respondent / husband has established the allegations through acceptable evidence and the trial Court, after considering the entire facts and circumstances of the case has rightly granted divorce and the same does not require any interference.

8. The marriage between the spouses on 26.03.1997 and the birth of two female children out of the wedlock are admitted facts. The first respondent / husband filed petition for divorce under Section 13 (1) (i) of Hindu Marriage Act on the ground of adultery. The allegation of the husband for divorce is that the appellant / wife lead adulterous life with the second respondent. Though he stated that both his wife and the second respondent availed leave on the same date on several occasions and there is SMS message by the first respondent to the second respondent, there is no documentary or acceptable evidence to substantiate the same. Similarly, the first respondent / husband also stated that disciplinary action was taken against his wife and the second respondent for their misconduct in the office and for that also no document has been filed.

9. The husband examined as P.W.1 has himself deposed during cross-examination that he is not in possession of any evidence

as to the alleged adulterous life of his wife. Therefore there is absolutely no evidence that the appellant lead adulterous life with the second respondent as alleged by the petitioner. Therefore, the petition filed under Section 13 (1) (i) of Hindu Marriage Act deserves to be dismissed. But the trial Court considering the cross-examination made on behalf of the appellant / first respondent on P.W.1 / husband, granted divorce. When P.W.1 was cross-examined by the counsel for the appellant / first respondent, it was suggested that the first respondent had no objection for the divorce as the husband made false allegation suspecting her fidelity. The spouses have been living separately for a period of about 10 years, i.e., more than a year and they have not been able to live together. Hence they are entitled to get divorce under Section 13 (B) of the Act.

10. The marriage bond was irretrievably broken down. The panchayat held for reunion became futile. Therefore when there is no possibility for reunion and the appellant / first respondent also expressed her consent for divorce, while cross-examining her husband P.W.1, this Court is of the considered view that the trial Court has rightly granted divorce, which can be taken as granted under Section 13 (B) of Hindu Marriage Act, 1955 and not under Section 13 (1) (i) of the Act.

11. It is made clear that the allegation made by the first respondent under Section 13 (1) (i) of Hindu Marriage Act has not been proved. Divorce is granted under Section 13 (B) of Hindu Marriage Act, 1955.

In the result, this Civil Miscellaneous Appeal is partly allowed and the order of the trial Court is modified as follows :

"Divorce is granted and the marriage between the appellant and first respondent held on 26.03.1997 is dissolved under Section 13 (B) of Hindu Marriage Act, 1955 and not under Section 13 (1) (i) of the Act."

Consequently, connected miscellaneous petition is closed. No costs.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

tsvn

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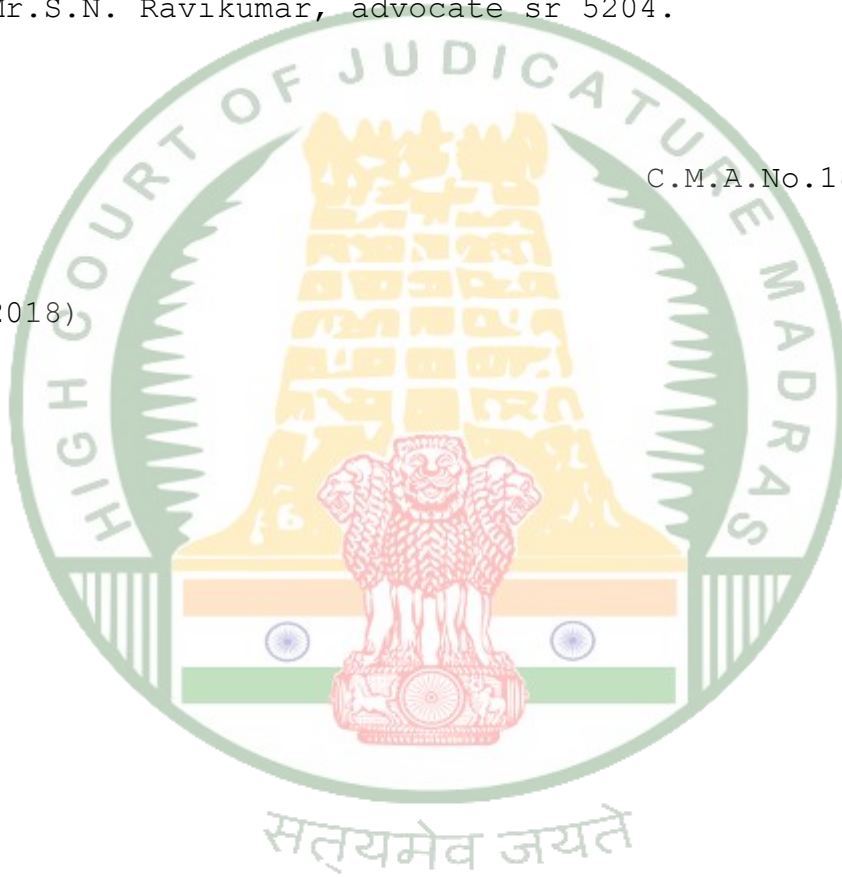
The Judge
Family Court,
Chengalpet.

Copy to
The Section officer
VR Section, High Court, Madras.

+1 CC to Mr.S. Selvathirumurugan, Advocate sr 5630.
+1 CC to Mr.S.N. Ravikumar, advocate sr 5204.

C.M.A.No.1889 of 2015

MR(CO)
SP(17/02/2018)



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