

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2018

CORAM : THE HONOURABLE MR.JUSTICE N.SESHASAYEE

CMSA.Nos.8 and 12 of 2015

R.P.Venkatraman ..... Appellant in both CMSAs

Vs

V.Padmavathi ..... Respondent in both CMSAs

Prayer in CMSA.No.8 of 2015: Civil Miscellaneous Second Appeal filed under Section 100 of CPC, to set aside the judgment and decree granted in H.M.C.M.A.No.09/2012 dated 07.09.2014 on the file of the Principal District Judge, Vellore, Vellore District, confirming the judgment and decree granted in HMOP.No.157 of 2009, dated 23.12.2011 on the file of the Subordinate Court, Vellore, Vellore District.

Prayer in CMSA.No.12 of 2015: Civil Miscellaneous Second Appeal filed under Section 100 of CPC, read with Section 28 of the Hindu Marriage Act, to set aside the judgment and decree granted in H.M.C.M.A.No.08/2012 dated 07.09.2014 on the file of the Principal District Judge, Vellore, Vellore District, confirming the judgment and decree granted in HMOP.No.180 of 2008, dated 23.12.2011 on the file of the Subordinate Court, Vellore, Vellore District.

For Petitioner : Ms.S.Hemalatha

For Respondent : Mr.V.K.Rajagopalan

COMMON JUDGMENT

These twin Civil Miscellaneous Second Appeals arise out of the concurrent findings of the Courts below, dismissing the two appeals filed by the appellant/husband in H.M.C.M.A.No.09/2012 and H.M.C.M.A.No.08/2012 on the file of Principal District Court, Vellore, seeking to set aside the common order dated 23.12.2011 passed by the Sub Court, Vellore in HMOP.No.180 of 2008 and HMOP.No.157 of 2009.

2.1 The petition in HMOP.No.157 of 2009 was filed by the husband/appellant for dissolution of the marriage on the ground of cruelty and desertion, whereas the petition in HMOP.No.180 of

2008 was filed by the wife/respondent for restitution of marriage.

3. As per the pleadings on the ground of desertion in HMOP.No.157 of 2009, the respondent-wife of the appellant is stated to have not joined her husband, post child birth and on this aspect, the Courts below appears to have taken a view that the husband has not taken his wife to the matrimonial home. Prima facie this has no reason why the wife should not join her husband. Having stated thus, on these aspects, the parties have come to a compromise, understanding the irretrievability of the marriage, based on which, the application under Order XXXIII Rule 3 is filed before this Court, whereby the respondent concurs for granting a decree of dissolution of marriage. The Memo of Compromise entered into between the appellant and the respondent reads as under :

#### MEMORANDUM OF COMPROMISE

(i) The Appellant-Husband and the Respondent-wife undertake to withdraw all legal proceedings (both civil as well as criminal) initiated by them against each other in all Courts.

(ii) Both the parties have agreed to dissolve their marriage and get separated by a decree of divorce pursuant to this Memorandum of Compromise.

(iii) In consideration of the aforesaid undertaking and in consideration of the Respondent-wife having undertaken to receive a sum of Rs.10,00,000/- (Rupees Ten Lakh only) towards permanent alimony, full and final settlement and for all other claims including for the minor daughter in MC.No.48/2008, the Appellant-husband herein is handing over two demand drafts for Rs.5,00,000/- (Rupees Five Lakhs only) each bearing D.D.Nos.203812 and 203813, both dated 29.10.2018 drawn on AXIS Bank, Chennai and the Respondent-wife acknowledges the receipt of the aforesaid sum from the Appellant-husband.

(iv) The Respondent-wife declares that she has taken all her jewellery ornaments and her belongings and Appellant and Respondent have exchanged all the articles and jewels and both the parties have no claims against each.

(v) The Respondent-wife herein declares that the judgement and decree dated 07.09.2014 passed by the Principal District and Sessions Court, Vellore in HMCMA.Nos.08/2012 and 09/2012 shall not be proceeded with and shall be closed as not pressed and undertakes to do all such acts and deeds to ensure that the Appellant-husband are not proceeded against.

(vi) It is mutually agreed that the custody of the female-daughter (the minor daughter) will be with Respondent-wife and the minor daughter shall have no right over the monies or properties of the Appellant-husband and Appellant-husband have no objection whatsoever for the same.

4. Both the parties are present along with their counsels. The appellant-husband has issued the Demand Drafts bearing Nos.203812 & 203813 dated 29.10.2018 for the sum of Rs.5,00,000/- each (totalling to Rs.10,00,000/-) favouring the respondent-wife and the same was received by the respondent-wife.

5. On going through the material evidence on case, this Court finds that there is no adequate evidentiary support for the wife not to join her husband and on this scope, this Court is not satisfied with the reasoning of the Courts below. Accordingly, these appeals are allowed and the judgment dated 07.09.2014 passed by the learned Principal District Judge, Vellore, in H.M.C.M.A.No.09/2012 and H.M.C.M.A.No.08/2012 are set aside, and the order passed by the Sub Court, Vellore in HMOP.No.180 of 2008 and HMOP.No.157 of 2009, dated 23.12.2011 stands closed and the marriage between the parties hereto stands dissolved. The terms of compromise may form a part of the judgment and decree. No costs.

\*Enclosed xerox copy of the Memo of Compromise dated 30/10/2018.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ds

To:

1.The Principal District Judge,  
Vellore.

2. The Sub Judge  
Vellore  
Vellore District.

+1cc to Ms.S.Hemalatha, Advocate sr.no.75486

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