

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.04.2018

Pronounced on : 14-09-2018

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

Civil Miscellaneous Appeal No. 2757 of 2016
and
C.M.P. No. 19902 of 2016

R. Padmini ... Appellant/Respondent

Versus

T. Hemachandran ... Respondent/Petitioner

Appeal filed under Section 19 of the Family Courts Act, 1984 against the Judgment and Decree dated 05.11.2016 in F.C.O.P. No. 143 of 2014 on the file of Judge (Full Additional Charge) Family Court, Vellore

For Appellant : Mr. V. Raghavachari
For Respondent : Mr. S. William

JUDGMENT

R. Subbiah, J

The appellant/wife has come forward with this appeal challenging the validity and/or correctness of the Order dated 05.11.2016 passed in F.C.O.P. No. 143 of 2014 on the file of Family Court, Vellore, by which the Family Court allowed the Original Petition filed by the respondent/husband and granted a decree of divorce on the ground of desertion.

2. The respondent herein has filed F.C.O.P. No. 143 of 2014 before the Family Court, Vellore contending that he married the appellant on 14.05.1992 and the marriage was solemnised at Vellore as per Hindu rites and customs in the midst of friends, relatives and family members of both sides. At the time of marriage, the respondent as well as the appellant were employed as Teacher in Government school. The respondent is a physically challenged person and it was also known to the appellant prior to the marriage. However, from the beginning of the marriage, the appellant teased the respondent by citing his physical disability. Further, as the appellant was also employed and earning money, she paid scant regard and respect to the respondent, as a husband. Due to the wedlock between the appellant and the respondent, a male child was born on 01.06.1993, however, within eight days of the birth, the child died due to medical complication. According

to the respondent, the appellant did not discharge her matrimonial obligation as a dutiful Hindu wife and there were quarrel and confrontations emanated between the couple very often when they resided together. Further, the appellant did not return to the matrimonial home and stayed in her parents house since February 1993. There were also panchayats held but the appellant did not heed to the advise given by the elders. The appellant, without any just and sufficient cause, is residing separately from 03.02.1993. The appellant had also given a false complaint before the All Women Police Station against the respondent and his family members which necessitated them to approach the Court seeking Anticipatory Bail. The respondent made repeated demands to the appellant to rejoin him in the matrimonial home, but it went in vain. Therefore, on 24.08.1993, the respondent caused a notice to the appellant through his lawyer for which a reply dated 11.09.1993 was sent by the appellant with false and untenable averments. The respondent, thereafter, filed HMOP No. 108 of 1993 before the Sub Court, Vellore seeking dissolution of marriage on the grounds of desertion. The said HMOP No. 108 of 1993 was dismissed on 12.09.2008 against which the respondent filed CMA No. 369 of 2009 before this Court. The Division Bench of this Court, while dismissing the CMA No. 369 of 2009 on 30.06.2011, has observed that the respondent herein has filed the HMOP No. 108 of 1993 within two years of desertion of the appellant, therefore, it is open for him to move the appropriate forum to redress his grievance and the dismissal of the appeal would not prevent the respondent to move the appropriate forum for relief. In the light of the aforesaid observation made by this Court in CMA No. 369 of 2009 dated 30.06.2011 and the fact that the appellant has not joined the matrimonial company of the respondent inspite of demands made and also since she did not file any petition for restitution of conjugal rights, the respondent was constrained to file the present petition in HMOP No. 208 of 2011 before the Sub Court, Vellore, which stood transferred to the Family Court, Vellore and was re-numbered as FCOP No. 143 of 2014. According to the respondent, the appellant and the respondent are residing separately from 03.02.1993 for about 18 years and by virtue of such long and continued separation, the matrimonial relationship between them had broken down irretrievably without any scope for re-union. Therefore, the respondent has filed FCOP No. 143 of 2014 for dissolution of the marriage on the ground of desertion.

3. The appellant has filed a Counter affidavit in HMOP No. 208 of 2011 (re-numbered as FCOP No. 143 of 2014) contending that the appellant discharged her obligations as a dutiful Hindu wife and looked after the respondent and his family members well. The allegation that the appellant had given a false complaint against the respondent and his family members was denied as false. According to the appellant, she did not part with the matrimonial company of the respondent without any just and sufficient cause but she left the matrimonial home when she was pregnant. The allegation that the appellant did not take any steps to rejoin the matrimonial company of the respondent was also denied as false. According

to the appellant, after she became pregnant, she went to her parents house for delivery on 24.02.1993 and thereafter, the respondent never cared to come and even meet the appellant at her parents house. The respondent was only interested in getting her monthly salary and he has not taken personal care of the appellant at the time of her pregnancy. Further, even though the birth of the child was intimated to the respondent, he did not come and see the child immediately. It is further stated that at the time of birth, the child had a deformity or defect in the spinal cord and that there was no movement for the child below the hip. The Doctors also informed that the child would not survive. Even though the deformity of the new born child was informed to the respondent, he or his mother did not care to come and see the appellant and the child. After much persuasion and reluctance, the respondent came to see the appellant and the minor child. Unfortunately, within eight days of the birth, the new born child died. Thereafter, the respondent did not come and see the appellant and therefore, only in order to ensure that the respondent takes back the appellant in the matrimonial home, she has given a complaint to the All Women Police Station. Even after such complaint, the respondent refused to take the appellant back to the matrimonial home. It was also stated by the appellant that the respondent and his mother ill treated her from the beginning of the marriage. Further, all the efforts taken by the appellant to rejoin the matrimonial home went futile and in such event, it cannot be said that the appellant has not taken any efforts to rejoin the respondent. Thus, it is contended by the appellant that the desertion from the matrimonial company of the respondent is neither wilful nor deliberate. In fact, the respondent had earlier filed HMOP No. 108 of 1993 in which he had made wild allegations against the appellant and it was contested by her. After contest, HMOP No. 108 of 1993 was dismissed by the Sub Court, Vellore and it was also confirmed by this Court in CMA No. 369 of 2009. There is no cause of action for filing the present petition and the present petition is hit by the principles of res judicata. When the earlier petition filed by the respondent in HMOP No. 108 of 1993 was dismissed, the present petition is not maintainable and therefore she prayed for dismissal of the Original Petition.

4. Before the Family Court, the respondent examined himself as PW1 and marked Exs. P1 to P7. On behalf of the appellant, the appellant examined herself as RW1 and marked Exs. R1 to R3. The Family Court, by placing reliance on the Judgment dated 30.06.2011 passed in CMA No. 369 of 2009, has concluded that this Court has given liberty to the respondent herein to file a fresh petition for dissolution of marriage and therefore, the present petition is not hit by the principles of res judicata in view of the dismissal of the earlier petition in HMOP No. 108 of 1993. The Family Court further rendered a finding that on earlier occasion, the respondent filed Original Petition and on it's dismissal preferred CMA No. 369 of 2009 before the High Court, but till such time, the appellant has not taken any steps to rejoin the matrimonial company of the respondent, particularly, by filing a Petition under Section 9

of The Hindu Marriage Act for restitution of conjugal rights. Therefore, it was concluded that the long and separate living of the appellant and the respondent had rendered the marital life meaningless and that no useful purpose would be solved even if the couple reunite themselves in the matrimonial life. Accordingly, the Family Court allowed HMOP No. 143 of 2014 filed by the respondent and granted a decree of divorce dissolving the marriage solemnised between the appellant and the respondent 14.05.1992.

5. The learned counsel appearing for the appellant/wife would vehemently contend that the marriage between the appellant and the respondent was solemnised on 14.05.1992 as per Hindu rites and customs and due to the wedlock, a male child was born on 01.06.1993. Unfortunately, the child so born, died within eight days of birth due to severe deformity and medical complication. After the death of the child, the respondent filed HMOP No. 108 of 1993 on the ground of desertion. In HMOP No. 108 of 1993, the respondent has made wild character assassination of the appellant by stating that she is having illicit intimacy with one Vinayagam and that is the reason why she deserted his matrimonial company. This allegation was repudiated by the wife/appellant herein by filing a counter and also contested the Original Petition. Ultimately, HMOP No. 108 of 1993 was dismissed by the Family Court on 12.09.2008 on the ground that the respondent did not substantiate the allegation that the appellant is living in adultery and that the desertion of the appellant is not voluntary. Aggrieved by the same, the respondent filed CMA No. 369 of 2009 before this Court. By Judgment dated 30.06.2011, this Court rendered a specific finding that the HMOP No. 108 of 1993 was filed within two years from the so-called desertion by the wife/appellant and therefore, while dismissing CMA No. 369 of 2009, this Court left it open to the parties to the appeal to file an application before the appropriate forum for redressal of their grievance. According to the learned counsel for the appellant, such an observation made by this Court will not automatically entitle the respondent to file the subsequent petition in FCOP No. 208 of 2011 (re-numbered as FCOP No. 143 of 2014) and the subsequent petition in FCOP No. 143 of 2014 would amount to res judicata and it is not maintainable in law.

6. The learned counsel for the appellant would contend that before filing HMOP No. 108 of 1993, the respondent has sent a notice dated 24.08.1993 for which a suitable reply was sent by the appellant on 11.09.1993. In the notice dated 24.08.1993, it was only contended by the respondent that the appellant deserted his matrimonial company without any just or sufficient cause and that during the subsistence of the matrimonial relationship, the appellant insulted and ill-treated him. However, in HMOP No. 108 of 1993, the respondent has alleged that the appellant is having illicit intimacy with one Vinayagam, which averment was not substantiated by him. Therefore, the learned Subordinate Judge, Vellore dismissed HMOP No. 108 of 1993 on the ground that the respondent has not substantiated the averments relating to adulterous living or

the factum of desertion. However, in the present Petition, being HMOP No. 208 of 2011 (re-numbered as FCOP No. 143 of 2014), the respondent has only alleged that the desertion of the appellant from the matrimonial home is without any justifiable cause. The fact remains that during month of February 1993, the appellant left the matrimonial home for deliverance of the child and thereafter, inspite of many mediations which took place in the presence of elders, the respondent refused to take back the appellant to the matrimonial home. In such event, it cannot be said that the desertion of the appellant from the matrimonial company of the respondent is wilful or without any just or sufficient cause. Even PW1/respondent herein, in his cross-examination, has admitted that the appellant left the matrimonial home on 18.08.1992, when she was pregnant. The Family Court, without taking note of the fact that the appellant left the matrimonial home for delivery of the child, when she was pregnant, erroneously concluded that the appellant had deserted the matrimonial company of the respondent without any reasonable cause. Further, the Family Court erroneously held that the appellant did not take any steps to rejoin the respondent in the matrimonial home, while the fact remains that the appellant had proved by filing Ex.R2, reply notice dated 11.07.1993 that she was always ready and willing to join the matrimonial company of the respondent. Even in the counter filed in the present petition, before the Family Court, the appellant had reiterated that she has no intention to reside separately and she is always ready and willing to join the matrimonial company of the respondent.

7. The learned counsel for the appellant also invited the attention of this Court to the deposition of PW1/respondent herein wherein it was stated that the appellant did not give the complaint to the All Women Police Station alleging that the respondent and his family members have demanded dowry. In fact, during the course of enquiry by the police, the respondent imposed a condition for reunion to the effect that the appellant's mother, brother or relatives should not interfere in their matrimonial relationship, as a condition precedent for taking the appellant back to the matrimonial home, for which the appellant has also given a written undertaking stating that neither his mother nor brother or relatives will interfere with the matrimonial relationship between the appellant and the respondent. While so, the Family Court has erroneously held that the appellant did not file a petition under Section 9 of The Family Court Act and that she had not taken any steps to join the matrimonial company of the respondent. In any event, the desertion of the appellant from the matrimonial company of the respondent is neither wilful, deliberate or wanton and in such circumstances, the long and separate living of the couple will not be a ground for granting a decree of divorce. The counsel for the appellant therefore prayed for setting aside the order of the Family Court.

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8. Per contra, the learned counsel for the respondent/husband would contend that on 03.02.1993, the

appellant left the matrimonial home for delivering the child. On 01.06.1993, a male child was born, of course with disability and eventually the male child died on 08.06.1993. On 09.06.1993, during the funeral of the minor child, the respondent was attacked by the brother of the appellant for no reason and this had caused a rift in the matrimonial relationship between the spouse. Therefore, a notice dated 24.08.1993 was sent by the respondent calling upon the appellant to give her consent for dissolution of the marriage on mutual grounds for which a reply dated 11.09.1993 was issued by the appellant with untenable averments. Notwithstanding the reply, the appellant had given a complaint dated 15.10.1993 against the respondent and his parents as if she was subjected to matrimonial cruelty for demanding dowry. Apprehending arrest, the respondent and his family members filed Petition seeking anticipatory bail in CrI.M.P. No. 3301 of 1993 before the learned Sessions Judge, Vellore and it was dismissed on 03.11.1993 on the ground that no case was registered against the petitioners therein. In the above circumstance, the respondent was constrained to file HMOP No. 108 of 1993 and it was dismissed on 12.09.1998. As against the same, the respondent filed CMA No. 389 of 2009 and this Court, by the Judgment dated 30.08.2011, has held that the petition has been filed within two years of desertion and therefore, it is open to the respondent/husband to seek appropriate relief by filing a petition before the competent Court. Thereafter, the respondent has filed the instant petition in HMOP No. 143 of 2014 praying for dissolving the marriage solemnised between the appellant and the respondent on 14.05.1992.

9. It is the contention of the counsel for the respondent that the respondent is a disabled person and he used to limp, while walking. When a child was born with disability or deformity, it was alleged by the appellant and his family members that the deformity was caused to the child since the father/respondent is also a disabled person. In this context, there was a wordy quarrel and the respondent was physically attacked by the brother of the appellant during the funeral. Such attack by the brother of the appellant had caused a deep scar and humiliation to the respondent and it had the effect of breakage of the matrimonial relationship between the appellant and the respondent beyond repair. Further, for the past more than two decades, the appellant and the respondent are residing separately without any physical contact with each other. Such long and continued separation had rendered the matrimonial relationship broken irretrievably and there is no scope for reunion among the couple. The appellant/wife is now aged 53 years and the respondent/husband is 58 years. The respondent is due to retire from his service during April 2018. In such circumstances, no useful purpose would be caused by keeping the matrimonial tie alive. Both the appellant and the respondent have been accustomed to live separately and at this stage, their reunion is not only possible but it will have no meaning to lead a purposeful matrimonial life. The Family Court, considering all the facts and circumstances that led to the difference between the parties, has rightly granted a decree of

divorce and it calls for no interference by this Court. In support of his contention, the learned counsel for the respondent relied on the decision of the Honourable Supreme Court in the case of (Rishikesh Sharma vs. Saroj Sharma) reported in (2007) 2 Supreme Court Cases 263 to demonstrate that given the long and continued separation of the couple, it will not be possible for the parties to the litigation to live together and there is no purpose in compelling them to live together. Therefore, according to the counsel for the respondent, the best course to be adopted is to confirm the order passed by the Court below so that the parties, who are litigating since 1993 and who have lost valuable part of their life, can live peacefully for the rest of their life.

10. The learned counsel for the respondent also relied on the decision of the Honourable Supreme Court in the case of (Naveen Kohli vs. Neelu Kohli) reported in (2006 2 Law Weekly 606 to contend that both the parties have crossed the point of no return. A workable solution is certainly not possible and the parties to the litigation cannot, at this stage, reconcile themselves to live together forgetting their past as a bad dream.

11. We have heard the counsel for both sides and perused the materials placed on record. As we have dealt with the factual matrix of the case, which led to the simmering matrimonial dispute between the parties and the eventual filing of the Original Petition, in detail, we refrain ourselves from dealing with the same any further. However, certain facts, which are germane and absolutely necessary alone, are reiterated hereunder.

12. The marriage between the appellant and the respondent was solemnised on 14.05.1992. Due to the wedlock, a male child was born on 01.06.1993. Unfortunately, the child could not survive due to medical complications, which the child confronted, at the time of his birth and therefore, on 08.06.1993, within eight days of birth, the child died. It is alleged that during the funeral of the child, the respondent was attacked by the brother of the appellant pursuant to a wordy quarrel and it had left the respondent humiliated and subjected him to shame and degradation in the midst of his neighbours and relatives. In connection with this incident, the respondent sent a notice dated 24.08.1993 in which he has highlighted certain aspersions cast towards him by the appellant during the course of the matrimonial relationship, particularly, with respect to his disability. Reference was also made to the fact that when the respondent went to see the appellant at the time of her pregnancy, he was humiliated and insulted by the appellant and her mother. It was further stated in the notice dated 24.08.1993 that during the funeral of the child, the respondent was beaten by the brother of the appellant and others. Therefore, the respondent sought the consent of the appellant to dissolve the marriage by filing a Petition under Section 13-B of The Hindu Marriage Act. For this notice, a reply notice dated 11.09.1993 was sent stating

that knowing the disability of the respondent, she had willingly married the respondent and therefore, the question of teasing the respondent with respect to his physical disability does not arise. The appellant further denied the allegation that she did not shower love and affection towards the respondent, rather, it was stated that she discharged her matrimonial obligation as a dutiful Hindu wife. It was further stated in the reply notice that from the beginning of the marriage, the respondent and his mother ill-treated the appellant, purportedly to bring more amount as dowry from her parents house, besides demanding a scooter for the respondent. It was also stated that when the appellant was pregnant, she left the matrimonial home for delivery and thereafter, she was never taken back by the respondent to the matrimonial home inspite of very many demands made by her. Ultimately, it was stated in the reply notice that the appellant is always ready and willing to join the matrimonial company of the respondent and she is expecting the respondent to come and take her back to live with him.

13. Thus, after exchange of notice and reply notice, the respondent has filed the HMOP No. 108 of 1993. In Para No.6 of the Petition, the respondent has clearly stated that he disowned the paternity of the child and that the child could not have born to him. Further, in para No.9, the respondent has stated that the appellant is having illicit intimacy with one Vinayagam, her maternal uncle. Further, in para No.10 thereof, reference was made to an incident on 08.06.1993 where the appellant is alleged to have attempted to strangle him. These averments are conspicuously absent in the notice dated 24.08.1993 sent by the respondent. At the same time, even in the counter in HMOP No. 108 of 1993, the appellant reiterated that she is ready and willing to join the respondent in the matrimonial home. The fact remains that the respondent could not substantiate the averments made in HMOP No. 108 of 1993. Further, HMOP No. 108 of 1993 was dismissed on the ground of limitation inasmuch as the respondent has filed HMOP No. 108 of 1993 within a period of two years from the date of the so-called desertion of the appellant. On appeal, this Court dismissed the CMA No. 369 of 2009 filed by the respondent on 30.06.2011 holding that since the respondent has filed the Original Petition within a period of two years from the date of the so called desertion by the appellant, the Original Petition is not maintainable and it is open to the respondent to file appropriate petition for redressal of his grievance. It is pursuant to the Judgment dated 30.06.2011 passed in CMA No. 369 of 2009, the respondent has filed the instant petition in FCOP No. 143 of 2014. Therefore, we are of the view that FCOP No. 143 of 2014 is maintainable and it cannot be said to be hit by the principles of res judicata in view of the dismissal of earlier petition.

14. It is an admitted fact that FCOP No. 143 of 2014 was filed by the respondent only on the ground of desertion. In FCOP No. 143 of 2014, reference was made to the long and continued separation of the couple for the past more than 20

years from 1993. Therefore, it is necessary to examine as to whether the appellant had deserted the matrimonial company of the respondent without any just and reasonable cause and whether such desertion is voluntary.

15. Even as admitted by the respondent, during his cross-examination as PW1, the appellant left the matrimonial home in February 1993, when she was pregnant. It is further deposed by the respondent that thereafter, the appellant did not return to the matrimonial home and did not take any step to rejoin the matrimonial company of the appellant. In this context, it is to be noted that on 08.11.1993, the appellant had given a complaint to the All Women Police Station, Vellore. According to the appellant, the said complaint was given by her to enable her to rejoin the matrimonial company of the respondent. During the course of an enquiry by the police officials, on the basis of the complaint given by the appellant, the respondent imposed a condition that the mother, brother or other relatives of the appellant should not intervene or interfere with the matrimonial relationship of the appellant and the respondent and on such condition, he is prepared to take back the appellant in the matrimonial home. Accordingly, before the police officials, the appellant has given a written undertaking to the effect that her mother, brother or any of her relatives will not, in any way, interfere with the matrimonial relationship between her and the respondent. After this complaint, the appellant and the respondent have in fact lived together for a period of three months. This was clearly spoken to in the cross-examination by none other than the respondent herein, as PW1. PW1 also further admitted that in the counter filed by the appellant in HMOP No. 108 of 1993, she has admitted that she is ready and willing to live with him. Thus, it is evident that there is no slackness on the part of the appellant in joining the matrimonial company of the respondent, but she was prevented from doing so by reason of the refusal on the part of the respondent to take her back to the matrimonial home. In such circumstances, it cannot be expected that the appellant could have filed a Petition under Section 9 of The Hindu Marriage Act or non-filing of such petition by her would disentitle her to rejoin the respondent.

16. In the light of the above factual aspect of the case, it has to be examined as to whether the appellant left the matrimonial company of the respondent voluntarily and such desertion satisfy the provisions contained under Section 13 (1) (i-b) of The Hindu Marriage Act.

17. It is well settled that desertion by either a husband or wife should be preceded by just or sufficient cause without any intention to deprive the matrimonial company of the other spouse. It cannot be said that a short period of separation cannot be regarded as desertion and that desertion must be for a longer period. In our opinion, irrespective of the period of desertion of the couple, either it is for an intermittent period or for a longer period, it must be shown that such a separation is wilful and deliberate. In other words, a

desertion should be preceded by animus deserendi, meaning thereby, there must be an ill intention or mal intention to part with the matrimonial company of the other spouse and to deprive him or her the matrimonial bliss. Thus, what is relevant for considering desertion is not the length of period during which the couple was living separately, but the reasons or cause therefor. To prove desertion by the other spouse, heavy burden lies on the person who seeks the relief of divorce on the ground of desertion. Such person has to prove four essential conditions namely (i) factum of separation (ii) animus deserendi (iii) absence of any of his or her consent and (iv) absence of his or her conduct giving reasonable cause to desert the spouse to leave the matrimonial home. If the above principles are adopted to the facts of the present case, we are of the view that the desertion of the appellant is with a just and sufficient cause. Even as admitted by the respondent, the appellant left the matrimonial home when she was pregnant. Even thereafter, as mentioned above, the appellant had taken very many steps to rejoin the matrimonial company of the respondent, but it was the respondent, who refused to take her back to the matrimonial home. Thus, the burden is on the respondent/husband to prove that the appellant had left his matrimonial company without any sufficient or justifiable cause, but such a burden has not been proved by him in this case sufficiently to the satisfaction of this Court. In such circumstance, the plea of the respondent that the appellant did not invoke Section 9 of the Hindu Marriage Act to file a petition for restitution of conjugal rights had lost significance especially when the appellant, in the counter affidavit filed in HMOP No. 108 of 1993 as well as the instant petition in HMOP No 143 of 2014, had categorically asserted that she is ready and willing to join the respondent in the matrimonial home. In such circumstances, we are of the view that the Family Court has hastily jumped to a conclusion that the appellant did not prove that she had taken steps to join the matrimonial company of the husband in the matrimonial home.

17. The learned counsel for the respondent would vehemently contend that the parties are residing separately for a quite long number of years and therefore, it is not possible for the couple to join together. Of course, it is true that the appellant and the respondent are residing separately for atleast two decades, however, the mere separation will not be a ground for granting a decree of divorce. There cannot be a straight-jacket formula to be adopted to dissolve the matrimonial tie of a couple by reason of their long and continued separation and it depends on the facts and circumstance of each case. In the present case, the first petition in HMOP No. 108 of 1993 was filed by the respondent on 05.11.1993 and it was dismissed on 12.09.2008, after a period of 15 years. The Order dated 12.09.2008 was affirmed by this Court in CMA No. 369 of 2009 on 30.06.2011. Immediately thereafter, the respondent has filed the instant Petition in HMOP No. 208 of 2011 before the Sub Court, Vellore, which stood transferred to the Family Court, Vellore and re-numbered as FCOP No. 143 of 2014. Thus, when the litigation between the

appellant and the respondent had been pending for quite some time before the competent Court, the appellant/wife cannot be expected to file a petition for restitution of conjugal right as contemplated under Section 9 of The Hindu Marriage Act. The fact remains that even in the HMOP No. 108 of 1993 and FCOP No. 143 of 2014, the appellant, without any inhibition, had clearly asserted her readiness and willingness to rejoin the matrimonial company of the respondent to lead a blissful matrimonial life. Therefore, we are of the view that long and continued separate living of the spouse alone is always not a criteria for the Courts to dissolve the matrimonial relationship of a spouse and such separate living has to be considered in the light of the attending facts and circumstance prevailing in each case. Therefore, we are of the view that this is not a case where the matrimonial relationship between the appellant and the respondent had reached a point of no return and still there are abundant chance for their reunion.

18. For all the reasons aforesaid, we set aside the Judgment and Decree dated 05.11.2016 made in F.C.O.P. No. 143 of 2014 on the file of Family Court, Vellore. The Civil Miscellaneous Appeal is allowed. No costs. Connected C.M.P. No. 19902 of 2016 stands closed.
rsh

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

The Family Court
(Full Additional charge)
Vellore

+1cc to M/s.V.Raghavachari, Advocate SR.NO..63616

SJ(CO)
sm:22.10.2018

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