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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.03.2018

CORAM :

THE HON'BLE MR. JUSTICE N.KIRUBAKARAN

C.M.S.A.Nos.31 & 32 of 2015

Against

C.M.A.Nos.24 & 25 of 2014

C.M.S.A.No.31 of 2015

Kavitha @ Poornakala

... Appellant/Respondent

Vs.

Raju @ Nagendra Raju

...Respondent/Appellant

Prayer: Civil Miscellaneous Second Appeal filed under Section 28 of Hindu Marriage Act read with Section 104 & 100 of Civil Procedure Code, to set-aside the common judgment and decree dated 7.8.2015, passed in C.M.A.No.24 of 2014 on the file of the II-Additional District Judge, Erode, while reversing the common judgment and decree dated 10.10.2013 passed in H.M.O.P.No.221 of 2009 on the file of the Principal Sub Judge, Erode.

For Appellant : Mr.E.J.Ayyappan

For Respondent : Mr.K.S.Jeyaganeshan

C.M.S.A.No.32 of 2015

Kavitha @ Poornakala

... Appellant

Vs.

Raju @ Nagendra Raju

...Respondent

Prayer: Civil Miscellaneous Second Appeal filed under Section 28 of Hindu Marriage Act read with Section 104 & 100 of Civil Procedure Code, to set-aside the common judgment and decree dated 7.8.2015, passed in C.M.A.No.25 of 2014 on the file of the II-Additional District Judge, Erode, while reversing the common judgment and decree dated 10.10.2013 passed in H.M.O.P.No.218 of 2009 on the file of the Principal Sub Judge, Erode.



For Appellant : Mr.E.J.Ayyappan

For Respondent : Mr.K.S.Jeyaganeshan

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C O M M O N O R D E R

CMSA No.31 of 2015 has been filed challenging the judgment passed by the First Appellate Court in C.M.A.No.24 of 2014, by which decree for restitution of conjugal rights granted by the Principal Sub Court, Erode, in H.M.O.P.No.221 of 2009 was set aside and C.M.S.A. No.32 of 2015 has been filed challenging the judgment passed by the First Appellate Court in C.M.A.No. 25 of 2015 granting a decree of divorce to the respondent thereby reversing the dismissal of the divorce petition in H.M.O.P.No. 218 of 2009 filed by the respondent before the Trial Court.

2.The appellant and the respondent are husband and wife, who got married on 01.09.2004 at Coimbatore. After living hardly for 3 months, disputes arose between the parties and they have been living separately for the past 14 years. The divorce petition filed by the respondent husband was dismissed by the trial court and the appeal filed by the respondent was allowed by the first appellate court granting the decree of divorce. Against the granting of divorce decree only, the appellant/ wife is before this court.

3.When the matter was called on 16.03.2018, both the parties were present and the appellant's father and mother were also present. Both the parties declared before this court that they are agreeable for divorce, on payment of Rs.23,00,000/- [Rupees Twenty Three Lakhs Only] and the matter could be decided once for all on payment of such amount to the appellant by the respondent, as one time settlement for grant of divorce. The respondent also agreed to tender the amount of Rs.23,00,000/- and transfer it by way of RTGS. In this regard, a joint memo of compromise dated 16.03.2018 signed by both the appellant and the respondent and counter signed by their respective counsels has been filed before this court.

4.The matter has been posted today i.e., 21.03.2018, only to verify as to whether the said amount of Rs.23,00,000/- has been transferred to the account of the appellant, as per the joint memo of compromise filed by the parties before this court.

5.It is evident that the couple lived together only for 3 months in the year 2004 and thereafter, for the past 14 years they have been living separately and has filed various proceedings before the Court. Therefore, the marriage has irretrievably broken down and there is no chance of reunion as



evident from the conduct of the parties. The parties have also agreed for divorce by mutual consent on payment of Rs.23,00,000/- by the respondent to the appellant.

6. Therefore, there is no use in continuing the proceedings as both the parties have agreed for divorce by mutual consent. For the aforesaid reasons, in order to do complete justice, this court confirms the decree of divorce granted by the first appellate court.

7. In view of the joint memo of compromise and the statements made by the parties before this court, the following order is passed :-

(1) CMSA No.31 of 2015 filed by the appellant/wife challenging the judgment of the first appellate court, by which, the decree and judgment of the trial court granting restitution of conjugal right was set aside, is confirmed.

(2) CMSA No.32 of 2015 filed by the appellant/wife challenging the decree of divorce granted by the first appellate court reversing the dismissal of divorce petition filed by the respondent/husband is dismissed confirming the decree of divorce.

(3) Further as already recorded a sum of Rs.23,00,000/- have been transferred to the account of the appellant by the respondent as both the parties agreed by the joint memo of compromise dated 16.03.2018 to get separated by consent.

8. Thus, both the appeals are disposed of granting decree of divorce in the above terms. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

TO:

1. The II Additional District Judge,
Erode.

2. The Principal Sub Judge,
Erode.



Copy to:

The Section Officer,
VR Section, High Court, Madras

+1cc to Mr.Mr.K.S.Jeyaganeshan, Advocate, S.R.No.21756

+2cc to Mr.Mr.E.J.Ayyappan, Advocate, S.R.No.21564

C.M.S.A.Nos.31 & 32 of 2015

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nr 22/05/2018