

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.A.No.890 OF 2018

R.Sujatha : Appellant/Petitioner

versus

Arasu Srivatsav : Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of Family Courts Act against the order dated 16.3.2018 in H.M.O.P.No.1788 of 2015 on the file of V Additional Family Judge, Chennai.

For appellant : Mr.R.T.Shyamala

For respondents : Mr.R. Senthil Kumar for
Mr.S.Selvathirumurugan

J U D G M E N T
(made by K.K.SASIDHARAN, J.)

The original petition filed by the appellant for a decree of divorce on the ground of cruelty and desertion was rejected by the V Additional Family Judge, Chennai, on the ground of maintainability. Feeling aggrieved by the decree dated 16 March 2018 in H.M.O.P.No.1788 of 2015, the unsuccessful petitioner is before this Court.

2. The original petition filed by the appellant for dissolution of marriage in H.M.O.P.No.1733 of 2015 was rejected on the ground of maintainability, primarily for the reason that she earlier filed an Original petition in H.M.O.P.No.284 of 2012 for annulment of marriage. In short, the plea taken in the earlier petition on account of non-consummation of marriage was taken as the reason for rejecting the original petition for divorce at the threshold.

3. The core question is whether the initiation of proceeding earlier for annulment of marriage in H.M.O.P.No.284 of 2012 under Section 12(1) (a) of the Hindu marriage Act and the

withdrawal of the said original petition without liberty would operate as a statutory bar for initiating a subsequent proceeding under Section 13(1)(i-a) and 13(1)(i-b) of the Hindu Marriage Act, for dissolution of marriage.

4. The appellant filed a petition for divorce under Section 12(1)(a) of the Hindu Marriage Act before the Family Court, Chennai. The substantial ground was non-consummation of marriage. The said original petition was contested by the respondent. The appellant was advised to withdraw the original petition. The Family Court dismissed the original petition as withdrawn. There was no liberty granted to the appellant to file another petition for the very same relief.

5. The appellant subsequently filed another original petition invoking Section 13(1)(i-a) and 13(1)(i-b) of the Hindu Marriage Act. The said petition was registered as O.P.No.1788 of 2015. The Family Court took up the issue of maintainability and rejected the original petition at the threshold. The trial Court was of the view that once there is an admission regarding voidable marriage, it would not be possible to entertain a plea for divorce on the ground that it was a valid marriage.

6. The earlier petition was under the provisions of Section 12(1)(a) of Hindu marriage Act. The cause of action for filing the subsequent original petition was not the one pleaded in the earlier petition in H.M.O.P.No.284 of 2012. The prior proceedings which was withdrawn was not on the ground of desertion and cruelty. However, the subsequent original petition was filed for dissolution of marriage on the ground of desertion and cruelty. The withdrawal of the earlier petition filed for declaration would not preclude the appellant from filing original petition for divorce on a different ground. The cause of action has arisen subsequently. The appellant nowhere in her original petition in H.M.O.P.No.1788 of 2015 contended that the facts constituting the act of desertion and cruelty were available to her when the earlier petition in H.M.O.P.No.284 of 2012 was filed.

7. We are therefore of the view that the learned trial Judge was not correct in rejecting the original petition on the ground of maintainability.

8. The order dated 16 March 2018 is set aside. The original petition in H.M.O.P.No.1788 of 2015 is restored to file. We direct the learned V Additional Family Judge, Chennai, to adjudicate the matter on merits after giving reasonable opportunity to the parties.

9. In the upshot, we allow the civil miscellaneous appeal.
No costs. Consequently, C.M.P.No.7433 of 2018 is closed.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

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To

The V Additional Family Judge, Chennai.

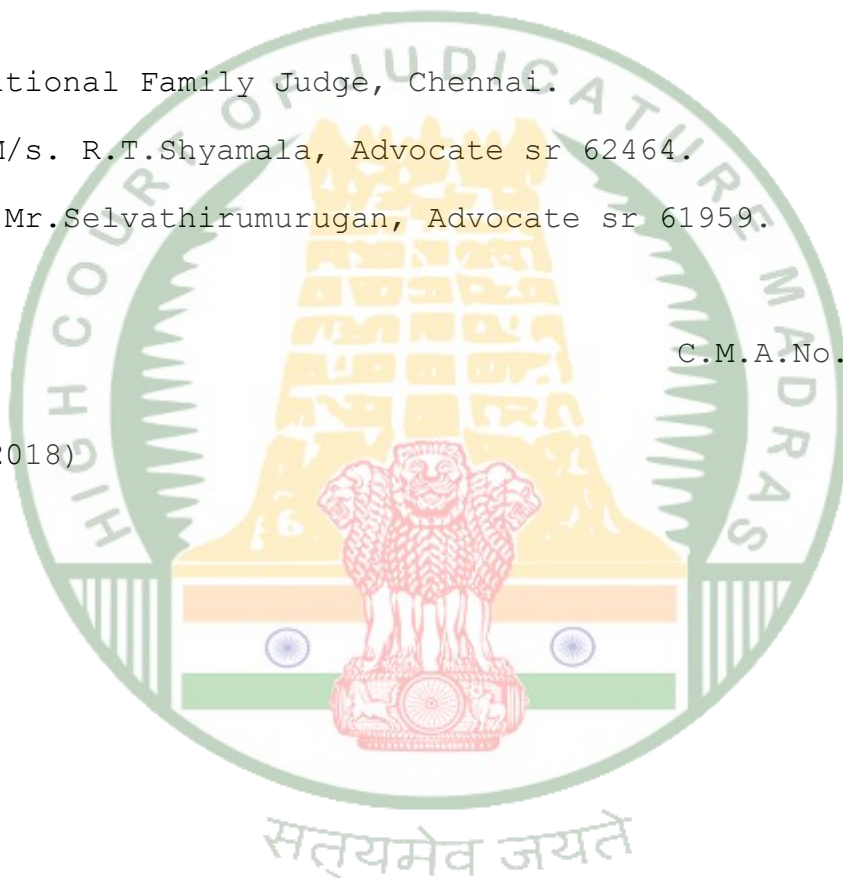
+1 CC to M/s. R.T.Shyamala, Advocate sr 62464.

+2 Ccs to Mr.Selvathirumurugan, Advocate sr 61959.

C.M.A.No.890 OF 2018

SJ(CO)

SP(14/11/2018)



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