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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.M.S.A.No.51 of 2013

and

M.P.No.1 of 2013

Venkatesan

... Appellant/Respondent

Vs

Vimal

... Respondent/Appellants

Prayer: Civil Miscellaneous Second Appeal is filed Section 28 of the Hindu Marriage Act, 1955 r/w. Under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 01.08.2013 made in H.M.C.M.A.No.17 of 2012 on the file of the I Additional District and Sessions Judge, Vellore District, Vellore in reversing the Judgment and Decree dated 19.08.2011 made in H.M.O.P.No.22 of 2004 on the file of the Subordinate Judge, Vellore.

For Appellant : Mr.C.Prabakaran

For Respondent : No Appearance

O R D E R

The present appeal arises out of the order passed in H.M.C.M.A.No.17 of 2012 on the file of the I Additional District and Sessions Judge, Vellore District, Vellore whereunder, the petition filed by the appellant in H.M.O.P.No.22 of 2004 before the Subordinate Court, Vellore seeking dissolution of his marriage with the respondent was allowed.

2. The brief facts which is essential for disposing of the case may be substantially stated : The marriage between the petitioner and the respondent took place on 08.09.2002, that the marriage had its meaning and relevance for a bare one month wherein after, the appellant found it inconvenient to sustain the marriage, and a year later he moved the Sub-Court, Vellore with his petition in H.M.O.P.No.22 of 2004 for dissolution of marriage on the twin grounds of adulterous life of his wife and



cruelty. In the order of Subordinate Court, Vellore, dated 19.08.2011, the appellant was granted a decree of dissolution of marriage on the ground of cruelty alone. His prayer based on adultery of his wife was rejected. Challenging the same, the respondent/wife has moved the I Additional District and Sessions Court, in H.M.C.M.A.No.17 of 2012 and the same was allowed. Hence, the appellant is before this Court challenging the said decree.

3. Heard Mr.C.Prabakaran, the learned counsel for the appellant. No representation for the respondent.

4. The only ground on which the Court of the first instance namely, the Sub-Court, Vellore has entered finally that the respondent / wife had treated the appellant / husband with cruelty is that she had filed various criminal cases against the appellant since 2007. The First Appellate Court finds that all these cases were filed at least after three years since filing the H.M.O.P. in 2004, and that they could not provide cause of action for seeking dissolution of marriage under the head of cruelty. In other words, where there had been a cause of action for invoking the ground on cruelty was in existence independent of the various criminal cases which the respondent had filed from 2007, the appellant possibly could have sustained his case for dissolution of marriage on the ground of cruelty.

5. On going through the judgment of the First Appellate Court, this Court does not find any error in its finding. Accordingly, this Civil Miscellaneous Second Appeal is dismissed and the Judgment of the First Appellate Court is confirmed. No costs.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

ssn

To

1. The I Additional District and Sessions Judge,
Vellore District, Vellore.
2. The Subordinate Judge,
Vellore.



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Copy to
The Section officer
VR Section, High Court
Madras 104.

+1 CC to Mr. Prabakaran, Advocate sr 26914.

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M.P.No.1 of 2013

MG(CO)
SP(08/05/2018)