

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07-02-2018

CORAM:

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

Civil Miscellaneous Appeal Nos. 2120 and 2121 of 2013

M.V. Indumathy .. Appellant in both the appeals

Versus

S. Gokulakrishnan .. Respondent in both the appeals

Appeal filed under Section 19 of The Family Courts Act against the Order dated 20.03.2013 in HMOP No. 1338 of 2008 and HMOP No. 1495 of 2008 on the file of II Additional Principal Judge, Family Court, Chennai.

For Appellant : Mr. G. Mohanakrishnan
in both the appeals

For Respondent : Mr. Ramesh Kumar Chopra
in both the appeals

COMMON JUDGMENT

(Judgment of the Court was delivered by R. SUBBIAH, J)

The appellant has come forward with these appeals questioning the validity and correctness of the Order dated 20.03.2013 passed in HMOP No. 1338 of 2008 and HMOP No. 1495 of 2008 on the file of II Additional Principal Judge, Family Court, Chennai. By the said Order dated 20.03.2013, the Family Court dismissed HMOP No. 1338 of 2008 filed by the appellant for dissolution of the marriage and allowed HMOP No. 1495 of 2008 filed by the respondent for restitution of conjugal rights.

2. It is seen from the records that the marriage between the appellant and the respondent was solemnised on 24.01.2007 at No.76, Mayor Basudev Street, Old Washermanpet, Chennai - 600 021, as per Hindu rites and customs and subsequently the marriage was registered in the office of the Registrar of Marriage, Royapuram, Chennai - 600 013 in Serial No. 18 of 2007.

According to the appellant, the factum of the marriage between her and the respondent was not known to the respective parents and therefore, after the marriage, they went to their respective house and residing separately. According to the appellant, the marriage was not consummated and they did not live as husband and wife even for a single day. In such circumstances, the appellant has filed HMOP No. 1338 of 2008 for dissolution of the marriage on the grounds of cruelty. On notice, the respondent has filed HMOP No. 1495 of 2008 for restitution of conjugal rights. The Family Court, upon analysing the oral and documentary evidence held that the appellant never lived with the respondent as a wife and in such a situation the question of subjecting her to matrimonial cruelty does not arise. On the other hand, the respondent expressed his inclination to live with the appellant and therefore dismissed the Petition filed by the appellant for dissolution of marriage and allowed the Petition filed by the respondent for restitution of conjugal rights.

3. We have heard the counsel for both sides. When the above appeals are taken up for hearing, the learned counsel for both sides submitted that the appellant and the respondent have entered into a compromise to dissolve the matrimonial dispute among themselves. They have also produced a joint Memorandum of Compromise dated 07.02.2018 duly signed by the appellant, respondent and their respective counsel. The Joint Memorandum of compromise reads as follows:-

"3. It is respectfully submitted that the above said Appellant and the Respondent got their marriage registered on 24.01.2007 and the same was registered before the SRO, Royapuram.

4. It is submitted that after their marriage, they never lived together in their matrimonial home as husband and wife.

5. It is respectfully submitted that in the above said case, the appellant filed FCOP No. 1338 of 2008 and the respondent filed FCOP No. 1495 of 2008 before the Honourable II Additional Family Court at Chennai, in the above said petitions, common order was passed as against the appellant on 20.03.2013.

6. It is submitted that against the order of the Hon'ble II Additional Family Court, at Chennai, the appellant prepared appeals before this Honourable Court and the same is pending till date.

7. It is respectfully submitted that the attempt of the 1st and 2nd petitioners parents for the reunion of the petitioner and the respondent was futile and all their efforts had not given the desired and expected results and there is no chance of the reunion between the petitioner and the

respondent as both of them decided to dissolve their marriage through divorce and file the compromise memo.

8. It is submitted that as per the misunderstanding between the appellant and the respondent, the respondent agreed to give divorce to the petitioner.

9. It is submitted that the appellant accepted and admitted that there is no past, present or future claims against the respondent and his family relating to the maintenance, return of jewels and articles and right of property etc.,

It is therefore humbly prayed that this Honourable Court may be pleased to accept this Compromise Memo and pass further suitable orders in terms of this Compromise Memo and thus render justice."

4. In the light of the above compromise memo dated 07.02.2018 entered into between the appellant and the respondent, we set aside the common order dated 20.03.2013 passed in HMOP No. 1338 of 2008 and HMOP No. 1495 of 2008 on the file of II Additional Principal Judge, Family Court, Chennai. Accordingly, both the Civil Miscellaneous Appeals are disposed of in terms of the Joint Memo of Compromise dated 07.02.2018. Consequently, HMOP No. 1338 of 2008 filed by the appellant for dissolution of the marriage is allowed and HMOP No. 1495 of 2008 filed by the respondent for restitution of conjugal rights is dismissed in terms of the Joint Memo of Compromise. The Memo of Compromise shall form part of the records. No costs.

* here enclosed Xerox copy of Memo of Compromise

Sd/-

Assistant Registrar(CS V)

//True Copy//सत्यमेव जयते

Sub Assistant Registrar

rsh
To
The II Additional Principal Judge
Family Court, Chennai.

+3ccs to Mr.G.Mohanakrishnan, Advocate, S.R.No.9195
+1cc to Mr.Ramesh Kumar Chopra, Advocate, S.R.No.9223

CMA Nos. 2120 & 2121/2013

gp(co)
cs/15/03/2018