

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.M.S.A.No.24 of 2017

T.Suresh Kumar ... Appellant/Petitioner

Vs.

S.Lakshmi @ Mahalakshmi ... Respondent/Respondent

Prayer: Civil Miscellaneous Second Appeal filed under Section 28 of Hindu Marriage Act r/w Section 100 of C.P.C., to set aside the Judgment and Decree dated 17.06.2015 passed in HMCMA.No.8 of 2013 on the file of the learned Principal District Judge, Vellore, Vellore District, confirming the judgment and decree dated 02.04.2013 in HMOP.No.171 of 2007 on the file of the learned Subordinate Judge, Vellore, Vellore District.

For Appellant : Mr.E.Kannadasan

For Respondent : Mr.E.M.K.S.Siddharthar  
Legal Aid Counsel

JUDGMENT

This Civil Miscellaneous Second Appeal is directed against the Judgment and Decree dated 17.06.2015 made in H.M.C.M.A.No.8 of 2013 passed by the Learned Principal District Judge Vellore, Vellore District, confirming the Judgment and Decree dated 2.4.2013 made in H.M.O.P.No.171 of 2007 on the file of the Learned Subordinate Court, Vellore.

2.The brief facts leading to the filing of the present civil miscellaneous second appeal as follows:

The Appellant herein is the husband of the respondent and he has filed the above HMOP under Sections 5(c), 12 and 13(iii) of Hindu Marriage Act seeking for a Decree of divorce nullifying the marriage taken place between the appellant and the respondent on the ground of mental disorder of respondent.

3.It is the case of the appellant that respondent was suffering from Epilepsy Mania and it is incurable and her mental disorder made unfit for the revision petitioner to lead Matrimonial life. It is his further case that despite due Medical treatment, the mental disorder was unable to be cured.

4.That apart it is also the appellant's case that out of the mental disorder the respondent attempted to commit suicide on several times and hence he has filed the above petition in H.M.O.P.No.171 of 2007 on the file of the Learned Subordinate Court, Vellore, Vellore District for divorce on the grounds stated above. The said petition was contested by the respondent and the trial Court dismissed the appellant's petition for divorce holding that the mental disorder of respondent remained unproved. As against the dismissal of his petition, the appellant herein has filed an appeal in H.M.C.M.A.No.8 of 2013 on the file of the learned Principal District Judge, Vellore and the same also came to be dismissed by the impugned Judgment dated 17.06.2015. Thus both the Order dated 02.04.2013 and 17.06.2015 are put under challenge in this Civil Miscellaneous Second Appeal by the appellant.

5.I heard Mr.E.Kannadasan, learned counsel for the appellant and Mr.E.M.K.S.Siddharthar, learned Legal Aid Counsel for the respondent and records available are perused.

6.On perusal of the records, it is not in dispute that the appellant and the respondent are husband and wife and their marriage had taken place on 16.09.2004. It is the revision petitioner's case that the respondent was suffering from incurable unsound mind and was suffering from mental disorder. The said mental disorder was suppressed by the respondent's parents and the respondent was married to appellant.

7.According to the appellant, the respondent's mental disorder remained incurable and hence he filed the above petition for divorce.

8.It is further seen that the Courts below disbelieved the version of the appellant holding that the mental disorder of the respondent was not established by the appellant successfully.

9.At this juncture on careful perusal of the records it is seen that the doctor who treated the respondent for mental disorder is examined as PW 3 and he has categorically spoken about the mental disorder of the respondent and has enlightened the treatment given to the respondent.

10.It is further seen that the respondent has deserted the appellant and she has also attempted for committing suicide more than once. It is again seen that the respondent was also given counseling in this regard and the same was unsuccessful.

11.Thus in my considered opinion the judgments impugned in this Civil Miscellaneous Second Appeal are liable to be set aside and the appellant is entitled for a Decree of Dissolution of marriage in view of the respondent's mental disorder.

12.In the result, this civil miscellaneous second appeal is allowed and the impugned judgments of Courts below are set aside by allowing the H.M.O.P.No.171 of 2007 by granting the Decree of divorce by dissolving the appellant's marriage with the respondent. No costs.

13.The Legal Aid Authority attached to this Court is directed to pay a sum of Rs.5,000/- to Mr.E.M.K.S.Siddharthar, Legal Aid Advocate.

Sd/-  
सत्यमेव जयते  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vs

To

1.The Principal District Judge,  
Vellore, Vellore District.

2.The Subordinate Judge,  
Vellore, Vellore District.

3.The Section Officer,  
V.R.Section, High Court, Madras.

4.The Secretary,  
High Court Legal Services Authority,  
High Court, Madras 600 104.

+1 cc to M/s.E.Kannadasan, Advocate SR.No.88531

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CNR (CO)  
CSL/20.02.2019



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