

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE C.SARAVANAN

C.M.A. No.1213 of 2013

Valliammal ... Appellant/Respondent

Vs.

R.Manickam ... Respondent/Petitioner

Prayer: Appeal filed under Section 19(1) of the Family Courts Act, 1984 against the judgment and decree dated 03.02.2000 in F.C.O.P.No.179 of 1996 on the file of Family Court, Salem.

For Appellant : Mr.V.R.Rajasekaran

For Respondent : Mr.S.Kalyanaraman

JUDGMENT

(Delivered by M.M.Sundresh, J.)

This appeal is preferred by the appellant, being the wife of the respondent, aggrieved over the divorce granted by the Family Court, Salem, on the ground of desertion.

2. The appellant and the respondent got married way back in the year 1977. Two children were born from the wedlock. The elder daughter has since married and the younger son is also a major. In fact, at the time of filing the petition in the year 1996, he was stated to be eleven years old. It is the specific case of the respondent that nine years after the marriage the appellant has left the matrimonial home. Thereafter, she also filed a suit in O.S.No. 594 of 1986 for partition on behalf of the minor children. Though, notice was given by the respondent on 15.03.1994, the appellant has not replied, notwithstanding receipt of the same. Therefore, the respondent sought for decree of divorce on the ground of desertion.

3. The appellant has contended that it is the respondent who has driven her out in the year 1985. The suit filed in O.S.No.594 of 1986 for partition on behalf of the minor children was dismissed and so also the appeal. She has also filed a petition for maintenance, which was ordered in MC No.5 of 1994. The petition filed for custody in O.P.No.86/89 by the respondent was also dismissed. Therefore, inasmuch as it is the respondent who is not willing to live together with the appellant, the judgment rendered by the Family Court, Salem, requires interference.

4. Learned counsel appearing for the respondent has submitted that the fact that the appellant filed a suit in O.S.No.594 of 1986 and the appeal seeking partition itself would show that she is not ready and willing to live with the respondent. She did not make any attempt to file any petition for restitution of conjugal rights. She left the matrimonial home on her own volition. There is no material or allegation of illicit relationship between the respondent and the third party. As the Family Court rendered judgment after thoroughly assessing the entire materials available on record, no interference is required.

5. Even according to the appellant, from the year 1985 onwards both the parties are living separately. The marriage was conducted in the year 1977. At the time of filing the petition, the respondent was 39 years old as against the appellant, who was 37 years. The petition was actually filed on 06.04.1994. Now, more than twenty-five years have elapsed. It is not in dispute that the appellant has filed a suit in the year 1986 on behalf of the children seeking partition. This factum alone would show that she was living separately. At least at that point of time she could have made an attempt to rejoin with the respondent, if she was driven from the matrimonial home by the respondent. She has also not filed any application for restitution of conjugal rights. Therefore considering the above, we are of the view that the Family Court has rightly granted decree for desertion. In such view of the matter, we do not find any error warranting interference.

6. At this stage, on a query raised by us, the counsel appearing for the appellant has fairly submitted that the respondent would pay a sum of Rs.6.5 lakhs in favour of the appellant if she is willing to receive it. Though the counsel appearing for the appellant does not have any instruction on this, considering the facts and circumstances of the case, we direct the respondent to pay a sum of Rs.6.5 lakhs within a period of six weeks from the date of receipt of a copy of this order, provided the appellant is willing to receive the same. It

is made clear that the said sum of Rs.6.5 lakhs be transferred to the account of the appellant, as being done for payment of maintenance amount.

The appeal stands dismissed with the aforesaid observations. No costs. Consequently, M.P.No.1 of 2013 is closed.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

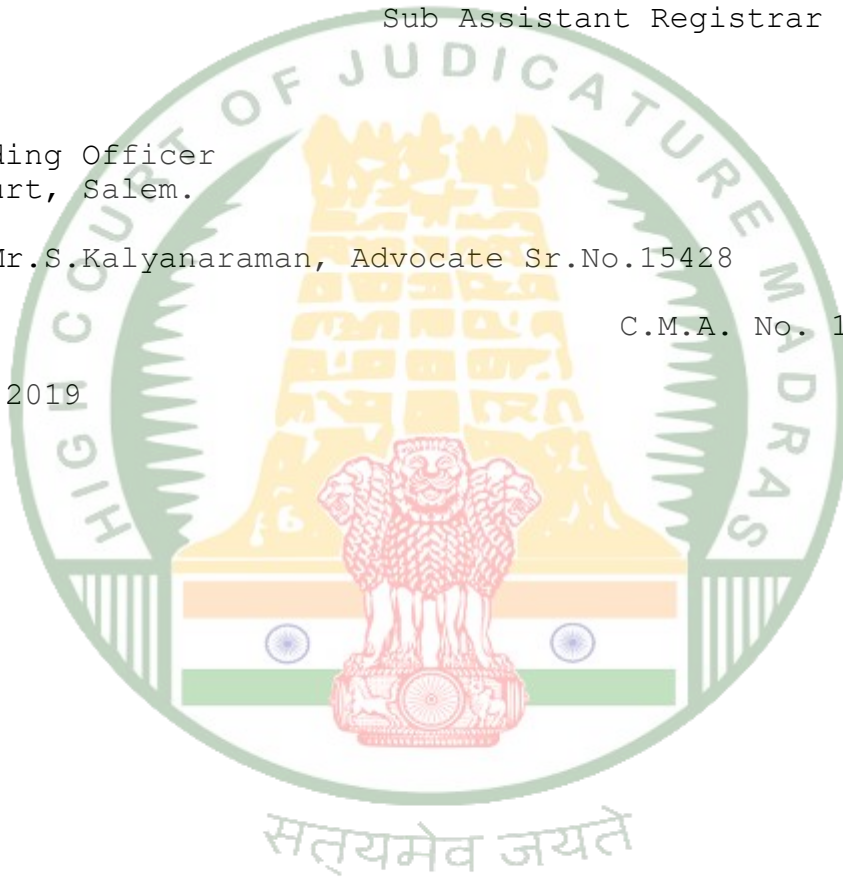
ssm

To:
The Presiding Officer
Family Court, Salem.

+1 cc to Mr.S.Kalyanaraman, Advocate Sr.No.15428

C.M.A. No. 1213 of 2013

RK(CO)
CSL/26.03.2019



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