

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.S.A.Nos.13 & 15 of 2008

Murugesan

S/o Ramu

.. Appellant in both the Appeals/
Respondent/Petitioner

-vs-

Latha

W/o R.Murugesan

.. Respondent in both the Appeals/
Appellant/Respondent

Prayer : Memorandum of Grounds of Civil Miscellaneous Second Appeals under Sections 13(1)(iii) and 28 of the Hindu Marriage Act read with Section 100 of the Civil Procedure Code, against the judgment and decree dated 29.11.2007 made in C.M.A.Nos.33 and 34 of 2006 on the file of the Principal District Judge, Cuddalore, reversing the judgment and decree dated 14.10.2006 made in H.M.O.P.No.70 of 2003 on the file of the Principal Subordinate Judge, Cuddalore.

For Appellant :: Mr.C.Prasanna Venkatesh

For Respondent :: Mr.R.Gururaj

JUDGMENT

The above civil miscellaneous second appeals have been filed challenging the impugned judgment and decree dated 29.11.2007 made in C.M.A.Nos.33 and 34 of 2006 by the learned Principal District Judge, Cuddalore, reversing the judgment and decree dated 14.10.2006 made in H.M.O.P.No.70 of 2003 by the learned Principal Subordinate Judge, Cuddalore dissolving the marriage that took place between the appellant and the respondent on 15.9.97 at Cuddalore as per the Hindu sastras.

2. Heard both sides.

3. The trial Court, having fully satisfied with the case made out by the appellant/husband that after the marriage that took place on 15.9.97 between the parties, when they lived together for less than two years, either of the parties had deserted the marriage and this fact was also specifically admitted by the respondent/wife. The trial Court also has taken note of yet another vital point that in spite of repeated mediations taking place between the parties, the same did not yield any fruit. Taking note of the admission made by the respondent/wife that she is living with her parents and not even replied to the pre-suit notice under Ex.A2, wherein the

appellant/husband has specifically alleged desertion on the part of the respondent/wife, the trial Court has come to the conclusion that it is a case for dissolution of marriage, for the simple reason that when the appellant/husband was all the time ready and willing to have re-union and restitution of conjugal rights, the respondent/wife was not showing any positive sign or response. Even the brother of the respondent had married the sister of the appellant and divorce proceedings were going on between them also. Finally, they also got separated by divorce. Admittedly, taking the divorce that took place between the appellant's sister and the respondent's brother, the respondent has been advised not to join with the appellant. Probably, that may be reason for the miserable failure of the mediation efforts that took place from both sides. When the trial Court, analysing all these practical issues faced by both parties, had come to the conclusion that the respondent/wife, after receiving the pre-suit notice for restitution of conjugal rights, has not even responded, it held that it is a clear case of desertion, based on which divorce was granted. But the first appellate Court has reversed such a finding merely on the basis of the usual denial made by the respondent/wife denying each averment without even specifically dealing with the pre-suit notice that has not been responded by the respondent/wife. When the pre-suit notice marked as Ex.A2 clearly shows that the appellant/husband was all the time ready and willing to take back the respondent/wife, the respondent/wife should have responded positively stating that she is ready and willing to lead the matrimonial life. Admittedly, in the present case, the respondent/wife, after receiving the pre-suit notice marked as Ex.A2, has abandoned to reply. That clearly shows that the respondent alone is responsible for desertion.

4. The learned counsel for the appellant also submits that when the parties are living separately for the past 20 long years and in addition thereto, the appellant/husband is also facing renal failure, for which he is undergoing treatment, the respondent also has not come forward to show any care on the ailing husband. That also again fortifies the prayer of the appellant/husband that the judgment and decree passed by the trial Court dissolving the marriage on the ground that the respondent/wife has miserably deserted the appellant/husband, should not have been interfered with by the first appellate Court. This could be also easily seen from the pre-suit notice marked as Ex.A2 that was not even responded to by the respondent. Besides, when either of the parties to the marriage lived together only for less than two years from the date of marriage and the respondent/wife had stayed away from the appellant for almost 20 long years and no specific reason has been assigned by the respondent/wife for her staying away, except for the fact that the appellant's parents had pressed the respondent to part with the jewellery of 25 sovereign, no evidence in support of the same was produced before the trial Court. Moreover, the appellant also had approached the Legal Aid Cell seeking assistance to unite both the appellant and the respondent. Although steps were taken, the respondent again did

not turn up. That clearly shows that she is guilty of desertion. Therefore, the impugned judgment and decree passed by the first appellate Court, being bereft of any merit whatsoever, are liable to be set aside. Accordingly, the same are set aside and the judgment and decree passed by the trial Court dissolving the marriage that took place on 15.9.97 between the appellant and the respondent and for permanent alimony, for the reasons cited above, are confirmed. In the result, the civil miscellaneous second appeals are allowed. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

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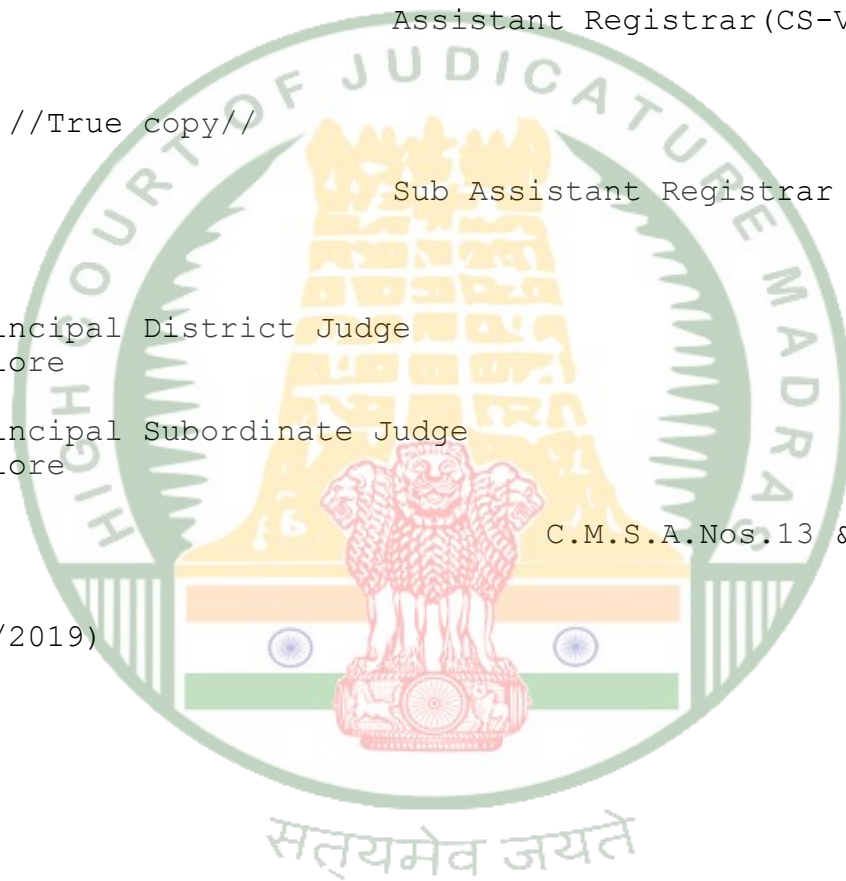
To

1. The Principal District Judge
Cuddalore

2. The Principal Subordinate Judge
Cuddalore

C.M.S.A.Nos.13 & 15 of 2008

MR (CO)
GMY (26/11/2019)



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