

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2019

CORAM

THE HON'BLE MR.JUSTICE T.RAJA

C.M.S.A.Nos.18 and 19 of 2008

Sairamesh Appellant in both appeals

Vs

A.P.G.Jayakumar Respondent in both appeals

Prayer in CMA 18 of 2008 : Civil Miscellaneous Second Appeal under Section 28 of the Hindu Marriage Act read with Section 100 of the Civil Procedure Code, 1908, against the judgment and decree dated 06.11.2006 in H.M.C.M.A.No.1 of 2005 on the file of the Principal District Court, Vellore, reversing the decree and judgment dated 23.07.2004 in H.M.O.P.No.48 of 1999, on the file of the Sub-Court, Tirupattur, Vellore District.

Prayer in CMA 19 of 2008 : Civil Miscellaneous Second Appeal under Section 28 of the Hindu Marriage Act read with Section 100 of the Civil Procedure Code, 1908, against the judgment and decree dated 06.11.2006 in H.M.C.M.A.No.2 of 2005 on the file of the Principal District Court, Vellore, reversing the decree and judgment dated 23.07.2004 in H.M.O.P.No.53 of 1999, on the file of the Sub-Court, Tirupattur, Vellore District.

For Appellant : Mr.K.Ashok Kumar

For Respondent : Mr.A.Kumar

J U D G M E N T

These Civil Miscellaneous Second Appeals were filed by one Sairamesh, Wife of A.P.G.Jayakumar, the respondent herein. The marriage between the appellant and respondent took place on 10.11.1995. Thereafter, they both were leading their matrimonial life for quite some till 15.08.1996. Thereafter, the respondent left to Vellore on the pretext that he will get the household items to their house at Thirumullaivadi village, where they were living separately, however he did not return. Hence, the appellant / wife filed a petition under Section 9 of the Hindu Marriage Act, 1995 in HM.O.P.No.48 of 1999 on the file of the Subordinate Judge, Tirupattur, for restitution of conjugal rights. The respondent husband filed a counter affidavit stating that the appellant wife was suffering from mental disorder and she was having perverse feeling towards

cohabitation. He also filed a petition under Section 13(3)(1) of the Hindu Marriage Act, 1955 in H.M.O.P.No.53 of 1999 on the file of Subordinate Judge, Tirupattur, seeking dissolution of marriage, on the ground that the appellant wife is suffering from mental disorder and that the marriage could not be consummated because of her illness. The learned trial Court took up both the petitions together for joint trial. Although the respondent husband has filed a detailed counter affidavit opposing the prayer for restitution of conjugal rights, stating that the respondent and appellant have lived together for only three days at Vellore and thereafter the wife was taken for treatment to CMC Hospital, Vellore and that they have lost track of the matrimonial life, the learned trial Court, allowed the petition filed by the wife / appellant herein for restitution of conjugal rights and dismissed the divorce petition filed by the husband / respondent herein. The trial Court held that the respondent husband was not able to establish that the wife was having mental disorder. Aggrieved thereby, appeals were filed by the respondent husband before the Principal District Judge, Vellore in H.M.C.A.Nos.1 and 2 of 2005. The learned first appellate Court, accepting the case made out by the husband that the appellant wife was taking treatment as in-patient from 12.05.1997 till 26.05.1997 at the CMC Hospital Mental Health Centre, Bagayam, held that their marriage was not consummated and that the appellant wife attempted to commit suicide and that they were separated for six long years, reversed the findings of the learned trial Court, thereby allowing H.M.C.A.Nos.1 and 2 of 2005 filed by the husband. As against the said orders, the present Civil Miscellaneous Second Appeals are filed by the appellant wife.

2. Learned counsel appearing for the appellant wife pleaded that the learned appellate Court was not right in misinterpreting Ex.R4 and saying that the appellant is having mental disorder when there is no such finding at all. Learned counsel further submitted that the respondent husband himself has, in his petition filed for divorce in H.M.O.P.No.53 of 1999 before the learned Subordinate Judge, Tirupattur, in paragraph No.3 has admitted that he was also taking treatment in the CMC Hospital Mental Health Centre, and highlighted the following portion of the affidavit.

"Hence, the CMC Mental Health Centre Authorities suggested a psychotherapy for both the petitioner and the respondent and wanted them to stay in the hospital for 15 days. Accordingly, both of them were there and subsequently, the hospital authorities found it to be a costly affair and wanted them to take separate residence and go there as out patients."

3. At the outset, it may be mentioned that the learned first appellate Court has discussed thread bare the evidence

of both the parties and on the basis of the material evidence placed before the court below, viz., discharge certificate and the bills showing the purchase of medicines, came to a conclusion that the appellant was taking treatment for mental disorder as in-patient in CMC Mental Health Centre, Bagayam from 12.05.1997 to 26.05.1997. Further, Ex.R4, discharge certificate issued by the CMC Hospital Mental Health Centre, Bagayam also shows that only the appellant wife was given treatment, but not the respondent husband. As she was to undergo the treatment, the respondent husband was also given counselling, as he was the attendant of the patient / wife. Admittedly, when there is a finding against the appellant that from 12.05.1997 to 26.05.1997, she took treatment as in-patient for her mental disorder, the findings given by the first appellate Court that due to the mental disorder, they were able to stay together for only three days from the date of their marriage, as admitted by the appellant herself in her application for restitution of conjugal rights, establishes that they were not able to consummate the marriage. One another finding recorded by the first appellate Court also shows that the appellant wife also openly admitted before the trial Court that she had attempted to commit suicide. Taking note of the fact that the appellant and the respondent were living separately for more than six years, that appellant attempted to commit suicide and that the appellant was treated as in-patient in the CMC Mental Health Centre for her mental disorder, the first appellate Court reversed the findings of the trial Court and allowed the appeals, filed by the respondent husband, thereby granting the decree of divorce.

4. Even before me also, the learned counsel for the respondent husband stated that they have not seen eye to eye after they parted ways with each other. Therefore, the findings given by the learned appellate Court that the appellant wife was taking treatment as in-patient from 12.05.1997 to 26.05.1997 for mental disorder and the marriage was not consummated for a quite long time and they are admittedly living separately almost from the date of marriage, except three days, no purpose would be served by reversing the judgment and decree passed by the learned first appellate Court. The arguments advanced by the learned counsel for the appellant that the appellant has been serving as a teacher in a Government Primary school cannot be taken as a substantial evidence to reverse the findings of the learned first appellate Court. Therefore, both the appeals are dismissed, answering the substantial questions of law, against the appellant.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

To

1.Principal District Judge, Vellore

2.Subordinate Judge, Tirupattur, Vellore District.

Copy To :

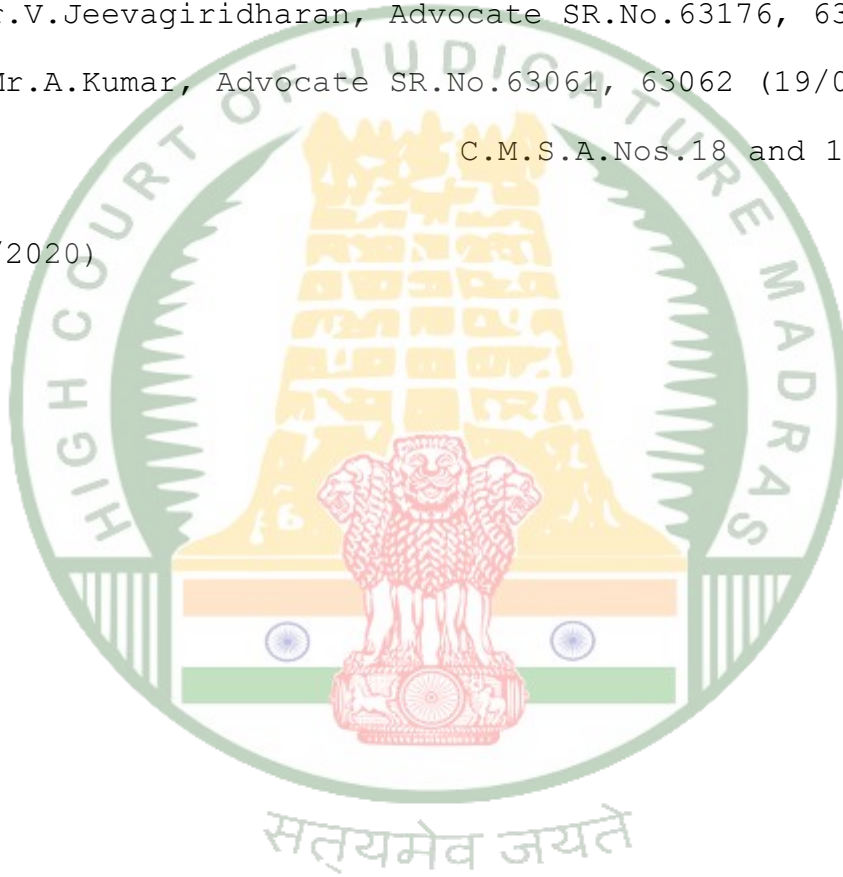
The Section Officer, VR Section,
High Court, Madras

+2cc to Mr.V.Jeevagiridharan, Advocate SR.No.63176, 63177

+4ccs to Mr.A.Kumar, Advocate SR.No.63061, 63062 (19/02/2020)

C.M.S.A.Nos.18 and 19 of 2008

SSV(CO)
GMY(08/01/2020)



WEB COPY