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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2019

CORAM

THE HON'BLE MR.JUSTICE T.RAJA

C.M.S.A.No.2 of 2008

Perumal ...Appellant/Respondent/Petitioner

Vs.

Subathra ...Respondent/Appellant/Respondent

Prayer : Civil Miscellaneous Second Appeal filed under Section 13(1) (i-b) of Hindu Marriage Act, 1955 r/w Section 100 of C.P.C., to set aside the order of the Lower Appellate Court in C.M.A.No.31 of 2005 dated 24.08.2007 and uphold the order of the Principal Sub Judge, Krishnagiri in M.O.P.No.22 of 2002 dated 06.02.2004 and pass further orders.

For Appellant : Ms.Revathy Ramachandran for
M/s Anand Abdul and Vinodh Associates

For Respondent : Mr.T.Panchatsaram

J U D G M E N T

The appellant, viz., Perumal, husband of the respondent, viz., Subathra herein has filed the present Civil Miscellaneous Second Appeal challenging the correctness of the impugned Judgment and Decree dated 24.08.2007 in C.M.A.No.31 of 2005 passed by the learned Principal District Judge, Dharmapuri at Krishnagiri and to uphold the Judgment and Decree passed by the Principal Subordinate Judge, Krishnagiri in M.O.P.No.22 of 2002 dated 06.02.2004.

2. The following substantial questions of law were raised by the appellant for consideration:

'(i) Whether the findings of the Learned Lower Appellate Court are in accordance with Law?

(ii) Whether the Appellant has got a valid reason to divorce on the ground of desertion?

(iii) Whether the act of the Respondent in not seeing the Appellant, when he was hospitalised would amount to cruelty?

(iv) Whether Lower Appellate Court is correct in relying upon a xerox copy of the Memorandum of Understanding, Ex.B-8 for coming to the conclusion that the Appellant had deserted the Respondent?'



3. The learned counsel appearing for the appellant / husband submitted that after the marriage solemnized between the appellant and the respondent on 22.11.1993 at Gobichettipalayam, as per Hindu Religious Rights and Caste Customs in the presence of the elders, family members and well wishers, they started living happily in the appellant's house at Ammapalli village for one year. After the lapse of one year from the date of marriage, the attitude of the respondent / wife shown that she started neglecting the appellant / husband. The respondent not only neglected the appellant / husband, she also refused to take care of his aged parents.

4. Further, the learned counsel for the appellant contended that very often, the respondent / wife used to leave the matrimonial home and refused to come back from her parental home. Although the appellant / husband, on many occasions, approached the respondent and took her back to the matrimonial home, at one point of time, the respondent / wife forced the appellant to settle at her house and leave the matrimonial house, for which the appellant / husband refused citing a reason that he has aged parents to look after. Finally, on 14.03.1999, the respondent / wife left the matrimonial home of the appellant and settled at her parental home. Therefore, the appellant convened a panchayat to settle the dispute amicably, but neither the respondent nor her parents had shown any willingness / readiness to attend the panchayat. In view of the same, the appellant / husband was constrained to issue legal notice to the respondent / wife on 21.05.1997 asking her to come and live with him. On receipt of notice, she had also given a reply on 29.05.1997 expressing her unwillingness to live with him.

5. Apart from the above, the learned counsel for the appellant represented that when the appellant had filed an application seeking restitution of conjugal rights under Section 9 of the Hindu Marriage Act, the respondent had also filed a counter affidavit dated 14.09.2000 taking a stand apparently that she was not willing to live with the appellant / husband in the matrimonial home. She also drew the attention of this Court to the trial Court Judgment in M.O.P.No.22 of 2002, wherein the Trial court observed that the respondent / wife is not willing to live with the appellant / husband.

6. The learned counsel for the appellant vehemently contended that when respondent / wife abruptly left the matrimonial home on 14.03.1999 and the appellant after many pursuance became upset and issued notice dated 21.05.1997 asking her to come and live with him, in turn, the respondent sent a reply notice dated 29.05.1997 expressing her unwillingness to live with him, shows that the respondent / wife is an offender of desertion. It can be confirmed from yet another stand taken by the respondent in the counter affidavit filed to the



appellant's application for Restitution of conjugal rights under Section 9 of the Hindu Marriage Act. Also when the respondent / wife has repeatedly taken a stand that she was unwilling to come and live with the appellant / husband, the learned trial court, accepting the genuineness and bonafide prayer made by the appellant for dissolution of the marriage, decreed the M.O.P.No.22 of 2002 and granted decree dissolving the marriage solemnized on 22.11.1993 at Gobichettipalayam.

7. Besides the above, the learned counsel for the appellant takes a plea that the respondent / wife filed a petition before the lower appellate court in C.M.A.No.31 of 2005 for no reason. The learned Principal District Judge, Dharmapuri at Krishnagiri without even considering the legal stand taken by both the appellant and the respondent, reasoning and conclusion given by the trial court that it was only the respondent / wife repeatedly refused to come and live with appellant / husband, has wrongly reversed the Judgment of the trial court, which calls for interference by this Court.

8. The learned counsel for the appellant in support of her contention has placed reliance upon the Judgment of the Hon'ble Supreme Court reported in (2006) 4 Supreme Court Cases 558 [Naveen Kohli V. Neelu Kohli] wherein the Apex Court, by referring to several reported Judgments have come to the conclusion that "since the parties are living separately for the last more than three years, we have no doubt in our minds that the marriage between the parties has irretrievably broken down. There is no chance whatsoever of their coming together. Therefore, the Court granted the decree of divorce". The Hon'ble Apex Court in Kanchan Devi V. Promod Kumar Mittal reported in (1996) 8 SCC 90 also further held that "parties were living separately for more than 10 years and the Court came to the conclusion that the marriage between the parties had to be irretrievably broken down and there was no possibility of reconciliation and therefore the Court directed that the marriage between the parties stands dissolved by a decree of divorce". In the present case also, when the parties are living separately for more than 20 years and hardly, they were living together only for one year in the initial stage after marriage in the year 1993, it is difficult to accept the respondent for restitution of conjugal rights and the divorce granted by the trial court in all respects ought to be accepted, she pleaded.

9. The learned counsel appearing for the respondent is unable to give any reply to the reply notice dated 29.05.1997 given by the respondent / wife to the legal notice of the appellant / husband on 21.05.1997 calling upon the respondent / wife to come and live with him in the matrimonial home. The legal notice issued by the appellant clearly shows that he was all the time willing for re-union with his wife, therefore, when he has issued a legal notice, it is not known why the respondent



10. Heard the learned counsel on either side and perused the documents placed on record.

12. Further, when the respondent / wife has repeatedly, viz., firstly in the year 1997, in her reply notice dated 29.05.1997 declined to live with the appellant, thereafter, when the appellant filed a petition for restitution of conjugal rights in the year 2000, after a gap of three years, she filed a counter affidavit on 14.09.2000, again, rejected the request of the appellant for restitution of conjugal rights. Therefore, the C.M.A. No.31 of 2005 filed by the respondent is without any basis. The learned Principal District Judge, Krishnagiri ought not to have entertained the same when she had repeatedly refused to accept the offer of re-union. Therefore, it is a clear case of desertion. Hence this Court, by accepting the stand of the respondent / wife is inclined to accept the Judgment and decree passed by the trial court. Therefore, the apparent error committed by the Lower Appellate Court is liable to be set aside. In view of the hide and seek played by the respondent / wife, the appellant / husband has lost the valuable time of his happy life. Further, in view of the avoidable fight initiated by the respondent / wife, she is not living with the appellant / husband and both the appellant and the respondent have lost more than two decades of their life, therefore, the conduct of the wife wanting to reunion with her husband is doubtful hence the same cannot be acceptable to the Court.

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14. In the case on hand, as I mentioned above, the respondent / wife had expressed her unwillingness to live with the appellant / husband through her reply notice dated 29.05.1997, besides, she had reiterated in counter affidavit filed before the trial Court that she is not willing for reunion with her husband. In such view of the matter, as the parties have been separately living for more than two decades, in the light of the ratio laid down by the Hon'ble Apex Court stated supra, it is a fit case for grant of dissolution of marriage. Accordingly, answering the substantial questions of law in favour of the appellant, the impugned judgment and decree passed by the lower Appellate Court in C.M.A.No.31 of 2005, dated 24.08.2007 is set aside and the Judgment and decree passed by the learned trial Court in M.O.P.No.22 of 2002, dated 06.002.2004 is restored. Consequently, the Civil Miscellaneous Second Appeal is allowed. No costs.

Sd/-

Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

ssd

To

1. The Principal District Judge,
Dharmapuri at Krishnagiri

2. The Principal Sub-ordinate Judge,
Krishnagiri

Copy To

The Section Officer,

VR Section, High Court, Madras. (2 copies)

+1cc to M/s.AAV Partners, Advocate SR.No.52777

C.M.S.A.No.2 of 2008

MR(CO)

GMV(02/12/2019)