

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2019

CORAM

THE HON'BLE MR.JUSTICE T.RAJA

C.M.S.A.No.46 of 2008

A.Yuvaraj

...Appellant

Vs

N.Deepa

...Respondent

Prayer :- Civil Miscellaneous Second Appeal under Section 100 of C.P.C., against the judgment and decree passed by the learned I Additional District Judge, Erode in C.M.A.No.42 of 2007 dated 20.12.2007 reversing the judgment and decree passed by the Principal Subordinate Judge, Erode in H.M.O.P.No.102/2005 dated 27.04.2007.

For Appellant : Mr.S.Francis Ashok

For Respondent : Mr.N.Manokaran

J U D G M E N T

This Civil Miscellaneous Second Appeal is directed against the judgment and decree passed by the learned I Additional District Court, Erode in C.M.A.No.42 of 2007 dated 20.12.2007, reversing the judgment and decree passed by the learned Principal Subordinate Judge, Erode in H.M.O.P.No.102 of 2005 dated 27.04.2007, raising the following substantial questions of law.

- a) Whether in the absence of any specific denial, the respondent herein is entitled for her claim?
- b)
- c) Whether the respondent is not stopped in law for her claim on her own admissions?"

2. The marriage between the appellant and respondent took place on 14.2.2003 at Kandasamy Muthayammal Thirumana Mandapam at Erode. Out of the said wedlock, a male child by name Lokesh Saran was born on 08.11.2003. The husband is a diploma holder in textile processing, whereas the wife is a graduate in nursing.

3. Learned counsel for the appellant argued that the respondent wife was working as a staff nurse at KMC Hospital, Erode and the appellant husband was working at Tiruppur in a Knitting unit as Merchandiser. After living happily together only for 13 days, the respondent wife, having superiority complex on account of her higher education, used to criticize the appellant husband. In view of the superiority complex, the respondent wife failed to give due respect to her in-laws and whenever it was questioned, she used to pose a threat to the appellant that she would commit suicide and involve the entire family of the petitioner in a criminal case. As the matrimonial life was not smooth even after making all efforts, the appellant was constrained to file a divorce petition on the file of the learned Principal Sub Court, Erode under Section 13 (1)(A) and 13(1)(B) of the Hindu Marriage Act, on the ground of cruelty and desertion.

4. Learned counsel for the appellant, arguing further, submitted that the learned trial Court was pleased to accept the case of the husband that there was cruelty and desertion on the part of the respondent wife and hence granted divorce, dissolving the marriage that took place between the parties. Aggrieved thereof, appeal was filed by the respondent wife before the learned I Additional District Court, Erode, which was allowed, giving a finding that the wife going to the police station indicates only her immaturity and therefore the same cannot be construed as cruelty. Taking note of the fact that the respondent wife and her parents falling at the feet of the appellant and his parents, the learned I Additional District Judge, Erode, came to the conclusion that the wife / respondent was always willing to unite with her husband and that is evident by her surrender before her husband by falling on his feet. On this basis, finding fault with the findings given by the trial Court granting divorce, the appellate Court reversed the judgment and decree passed by the trial Court. Being aggrieved thereby, the present Second Appeal has been filed.

5. During the course of arguments, although the learned counsel for the appellant husband pleaded that both the appellant and the respondent are not living together for quite a long time, also fairly stated that the appellant, the father of the son aged about 15 years, has not even taken care to visit him all these years. It could be seen that the appellant has not moved any application seeking visitation rights. Be that as it may. When the appellant has alleged cruelty and desertion, it is not known as to why he has not been chosen to see his only son, who was also taken care by the respondent wife all through these years. On these grounds, this Court is of the view that no question of law, much less any substantial question of law arises for consideration in this appeal. Therefore, I am not

inclined to entertain this C.M.S.A. The appeal is bereft of any merits and this Court is not inclined to interfere with the findings of facts rendered by the learned I Additional District Judge, Erode. In result, the appeal fails and it is dismissed. No costs.

KST

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The I Additional District Judge,
Erode.
2. The Principal Subordinate Judge,
Erode.

Copy to:-

The Section Officer,
V.R.Section,
High Court, Madras - 104.

+1cc to Mr.N.Manokaran, Advocate, SR.No.47184
+2cc to Mr.S.Francis Ashok, Advocate, SR.No.47350

C.M.S.A.No.46 of 2008

Kak(30/07/2019)