

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2019

CORAM

THE HON'BLE MR.JUSTICE T.RAJA

C.M.S.A.No.26 of 2010 and
M.P.No.1 of 2010

Elangovan

... Appellant

Vs.

Chithra

... Respondent

Civil Miscellaneous Second Appeal filed under Section 28 of Hindu Marriage Act r/w Section 100 of C.P.C., to set aside the Judgment and decree of the lower appellate court in C.M.A.No.1 of 2010 dated 18.08.2010 on the file of the Principal District Judge, Villupuram, reversing the Judgment and Decree in H.M.O.P.No.64 of 2006, dated 19.08.2009 on the file of the Sub-ordinate Judge, Kallakurichi.

For Appellant : Mr.V.Manohar

For Respondent : Mr.P.Valliappan

J U D G M E N T

The Civil Miscellaneous Second Appeal has been directed against Judgment and Decree Judgment of the lower Appellate Court in C.M.A.No.1 of 2010 dated 18.08.2010 on the file of the Principal District Judge, Villupuram reversing the Judgment and Decree dated 19.08.2009 passed by the trial Court.

2. Earlier, when the trial Court has granted a decree for divorce dissolving the marriage by Judgment and Decree dated 19.08.2009, it was questioned by the wife / respondent herein, by way of of an appeal in C.M.A.No.1 of 2010 before the learned Principal District Judge, Villupuram that the trial court without any finding, whatsoever, on any of the issues, in a cryptic manner, without even discussing the averments being made by way of a reply, has wrongly proceeded to grant divorce. Considering the few lines of order of divorce granted by the trial court, the Lower Appellate Court, taking note of the fact that the trial court has miserably failed to even consider the nature of cruelty alleged against the respondent / wife, rightly reversed the Judgment and decree passed by the trial court, as

against the same, the Petitioner /Husband has filed the present Civil Miscellaneous Second Appeal.

3. This Court, while admitting the present Civil Miscellaneous Second Appeal has framed the following two issues, as Substantial Questions of Law:-

'1. Whether the Lower Appellate Court is correct in reversing the Judgment of Trial Court merely because he can come to another conclusion?

2. Whether the Lower Appellate Court committed error or not in reversing the judgment of the Trial Court in absence of any contra evidence on the part of the respondent?''

4. A proper reading of the above questions cannot be construed or accepted, at any point of time, as substantial questions of law. Be that as it may, the learned counsel appearing for the respondent stated that the appellant has committed serious offence by conducting second marriage even before the expiry of the statutory period of limitation for filing an appeal. Moreover, the appellant has not even obtained an order of Stay from this Court against the Impugned Judgment.

5. The learned counsel for the appellant has placed on record the letter dated 22.12.2018 stating that the appellant has not responded to his repeated communications to conduct the case, therefore, he reported 'No Instructions'.

6. The letter dated 22.12.2018 produced by the learned counsel for the appellant is taken on file and based on the said letter stating that the appellant has not responded to his repeated communications to conduct the case, this Civil Miscellaneous Second Appeal is dismissed for 'No instructions'. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The Principal District Judge,
Villupuram.

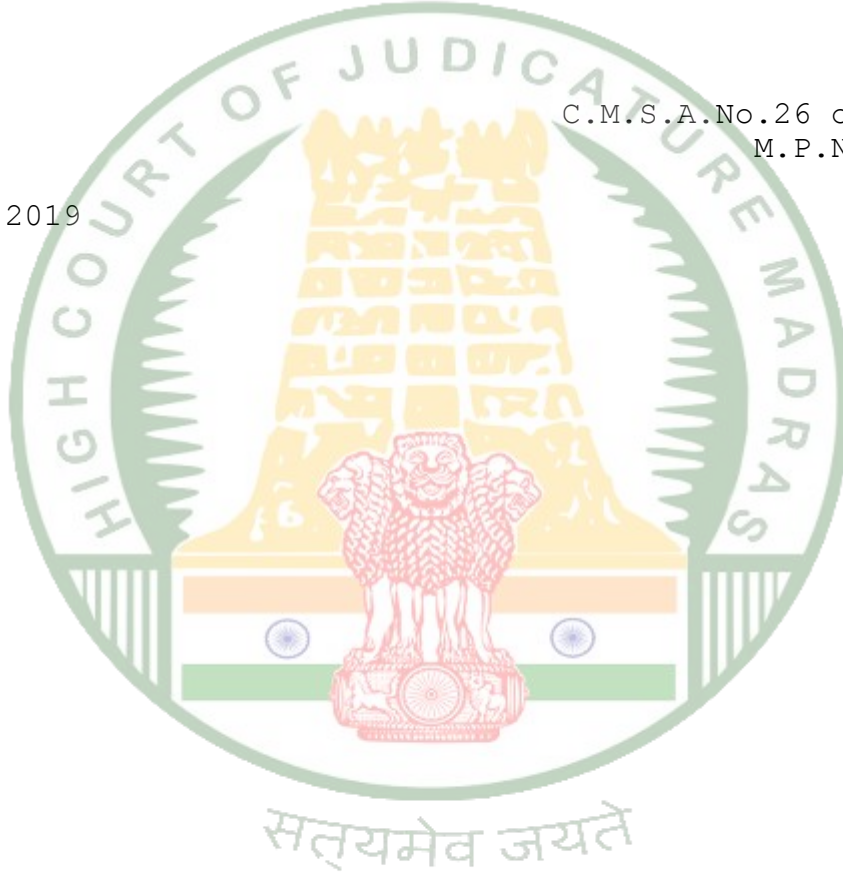
2. The Sub-ordinate Judge,
Kallakurichi.

Copy To: The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to Mr.P.Valliappan, Advocate, Sr.No. 47752

BR(CO)
CSL/04.07.2019

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