

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.S.A.No.10 of 2006

Murugavel

... Appellant/Petitioner

Vs.

Amudha

... Respondent/Respondent

Prayer : Civil Miscellaneous Second Appeal is filed under Section 28 of the Hindu Marriage Act read with Section 100 of the Code of Civil Procedure, against the Judgment and Decree dated 31.12.2004 made in H.M.O.P.No.90 of 2003 on the file of the Subordinate Judge, Tiruvarur and confirmed on 31.08.2005 in A.S.No.6 of 2005 on the file of the District Court, Nagapattinam.

For Appellant : Mr.T.R.Rajaraman

For Respondent : Mrs.S.Sridevi

Judgment

The present Civil Miscellaneous Second Appeal has been filed against the Judgment and Decree dated 31.12.2004 made in H.M.O.P.No.90 of 2003 on the file of the Subordinate Judge, Tiruvarur and confirmed on 31.08.2005 in A.S.No.6 of 2005 on the file of the District Court, Nagapattinam.

2. The case of the appellant is that the marriage between the appellant and the respondent was solemnized on 15.09.1994 as per the Hindu Rites and Customs, and out of the wedlock, a male child was born in the month of December 1995. The appellant was working as a teacher in the Government Higher Secondary School at Nannilam, whereas the respondent was a Head Master at Mudikondan Panchayat Union School. The appellant was working in the temporary post, but the respondent was in the permanent job and she was also getting higher salary than the appellant, and therefore, she started dominating the appellant and his parents, and further insisted the appellant to leave the house for separate residence at Nannilam which is about 3 kilometers away from where they were residing. The appellant had informed that he has to take care of his old aged parents, but the respondent was not ready to listen his words and further tried to commit suicide. As a

result, the appellant got separated from the respondent and filed H.M.O.P.No.29 of 1997 for Judicial Separation before the Sub Court, Nagapattinam. During the pendency of the petition, mediation was suggested by the Court. Consequently, they lived together for some days, and the respondent gave birth to another child in December 1998. Thereafter, the respondent again started to harass the appellant. Hence, the appellant filed a petition for divorce in H.M.O.P.No.355 of 1999. The respondent filed a petition for restitution of conjugal rights in H.M.O.P.No.32 of 1999 and all the three petitions including the H.M.O.P.No.29 of 1997 earlier filed by the appellant were transferred to Sub Court, Thiruvarur and numbered as H.M.O.P.No.4 of 2000, H.M.O.P.No.13 of 2000 and H.M.O.P.No.2 of 2000. Subsequently, H.M.O.P.No.2 of 2000 and H.M.O.P.No.13 of 2000 came to be dismissed, and H.M.O.P.No.4 of 2000 filed by the respondent for restitution of conjugal rights was allowed on 27.09.2000.

3. It is the further case of the appellant that aggrieved by the orders made in H.M.O.P.No.2 of 2000 and H.M.O.P.No.13 of 2000, the appellant preferred an appeal, but it was dismissed on 07.03.2001. Thereafter, the respondent had written a registered letter dated 12.03.2001 to the appellant to come and live with her, but the appellant was not ready to live with her and he again filed a petition for dissolution of marriage in H.M.O.P.No.90 of 2003 before the Sub Court, Thiruvarur.

4. Denying the allegations of the appellant/husband, the respondent/wife filed a counter affidavit stating that it is true that she was a working woman, but the other allegations attributed against her with regard to getting higher salary and not treating her husband properly are all fictitious. She never insisted the appellant to come out of the joint family and she never ill-treated him that she would commit suicide. Further, it is stated that even though the petition filed for restitution of conjugal rights was allowed on 27.09.2000, the appellant did not take any steps to give conjugal rights to the respondent and he is living separately by discarding the respondent. The respondent is always ready to live with the appellant, but only the appellant has been purposely evading to join with her.

5. The learned Sub Judge, Tiruvarur, after considering the pleadings, oral and documentary evidence dismissed the H.M.O.P.No.90 of 2003 filed by the appellant and therefore, the appellant preferred an appeal before the District Judge, Nagapattinam in A.S.No.6 of 2005. But it was also came to be dismissed on 31.08.2005. Hence, aggrieved by the same, the appellant has preferred this appeal before this Court on the following substantial questions of law :

a) Is the Learned District Judge right in refusing a Decree for divorce when admittedly, the

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application was filed after a year of obtaining restitution of conjugal rights?

b) When there was no unconditional offer from the wife to live with the husband, after obtaining restitution of conjugal rights, still is the Learned District Judge right in negating the relief in favour of the husband?

6. Heard the learned counsel for the petitioner and the learned counsel for the respondent, and perused the materials available on record.

7. On perusal of the order dated 31.12.2004 made in H.M.O.P.No.90 of 2003, it is observed that the respondent after obtaining the decree of conjugal rights had written a letter dated 12.03.2001 to the appellant herein, calling upon him to rejoin her for cohabitation. But the appellant without sending any reply to the said letter waited for the statutory period to elapse and then filed a petition for divorce under Section 13(1)(A)(ii). The said attitude of the appellant clearly shows that he was not ready to live with the respondent and only the respondent was willing to live with the appellant after the marital separation. Further, it is observed that the appellant has not placed any material to show that the respondent had tried to commit suicide when he refused to come out from the joint family, and the allegation that the respondent had engaged some persons to assault the appellant was also not proved by the appellant by producing any witness or material.

8. It is also observed from the order of the Court below that the respondent had requested only for a separate residence to live a peaceful life with the appellant, but the appellant suppressing the fact that he has a brother, who was residing next to his house had refused to come out from the joint family stating that he has old aged parents and no body was there to take care of them. Moreover, it is observed that as per the mediation suggested by the Court, both the appellant and the respondent had rejoined and lived together for some days in a separate residence at Nannilam and the same was also accepted by the appellant. While that being so, the appellant has not taken any steps for reunion and has not even visited his child after he got separated from the respondent. Further, the appellant stated that the respondent had earned more salary and therefore she dominated him, but from the evidence he placed before the Tribunal, it is found that the respondent had not earned more salary and only the appellant had earned more salary than the respondent. Hence, In the light of the above observations, this Court is of the view that the appellant has not made out any grounds to interfere with the orders passed by the Courts below and thus, this Civil Miscellaneous Second Appeal deserves to be dismissed.

9. Accordingly, this Civil Miscellaneous Second Appeal is dismissed and the substantial questions of law raised by the appellant are answered in favour of the respondent. No costs.

Sd/-
Assistant Registrar(CO MDU)

//True copy//

Sub Assistant Registrar

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To

1. The Presiding Officer,
Sub Court, Tiruvarur.
2. The Presiding Officer,
District Court, Nagapattinam.
3. The Section Officer,
VR Section,
High Court, Madras.

C.M.S.A.No.10 of 2006

SSV(CO)
GMY(07/08/2020)