

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2019

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.2904 of 2015

Malliga

... Appellant/Petitioner

Vs.

Sivakumar

... Respondent/Respondent

PRAYER : Appeal filed under Section 19 of Family Courts Act, 1984 against the judgment and decree dated 30.10.2013 passed in M.O.P.No.233 of 2019 on the file of the Family Court, Puducherry.

For Appellant : Ms.Madhu
for Mr.G.Karthikeyan

For Respondent : Mr.P.Veeraraghavan

JUDGMENT
(Delivered by M.M.SUNDRESH., J)

This appeal has been preferred by the appellant, aggrieved over the order passed in M.O.P.No.233 of 2009, declining to grant her the decree of divorce.

2. The appellant is the wife of the respondent. The aforesaid petition has been filed seeking divorce on the ground of cruelty. The Family Court, Puducherry, dismissed the said petition by placing reliance upon Exs.P8 to P15 and considering the fact that H.M.O.P.No.14 of 2009 filed by the respondent seeking restitution of conjugal rights was allowed ex-parte by the Sub Court, Tindivanam, and the same has attained finality.

3. The learned counsel appearing for the appellant submitted that the application filed to set aside ex-parte order in H.M.O.P.No.14 of 2009 has been dismissed as against which,

the appellant is conducting further legal course of action. It is further submitted that Exs.P8 to P15 cannot be sustained since the respondent is harassing the appellant and only for substantiating the same, the aforesaid documents have been filed. Further, the respondent has sent letters to the employer of the appellant levelling allegations against her.

4. The learned counsel appearing for the respondent while not disputing the aforesaid allegations with respect to the communication sent to the employer submitted that the order passed by the Family Court, Puducherry does not require interference in view of the order passed in H.M.O.P.No.14 of 2009 and the findings rendered in M.O.P.No.233 of 2009.

5. It appears that for more than a decade, the parties are living apart. Considering the above and especially taking note of the fact that M.O.P.No.233 of 2009 has been dismissed primarily on the ground of the finality attained in H.M.O.P.No.14 of 2009, we are inclined to set aside the order passed. The Family Court, Puducherry, ought to have relied upon Exs.P8 to P15 which have been filed by the appellant to substantiate her case with respect to the harassment caused by the respondent. It appears that the respondent wants to live with the appellant but it is the case of the appellant that the communications constitute harassment and cruelty. This has not been taken note of by the Family Court, Puducherry.

6. In such view of the matter, the findings rendered in M.O.P.No.233 of 2009 resulting in dismissal of the said petition stand set aside and the petition stands restored. However, the appellant cannot proceed with the said petition until and unless she gets the ex-parte decree granted in H.M.O.P.No.14 of 2009 set aside. In such view of the matter, though we are setting aside the order passed in M.O.P.No.233 of 2009, the Family Court, Puducherry is directed not to proceed with the said case any further for a period of six months. During such time, the appellant is at liberty to challenge the orders passed by the Sub Court, Thindivanam in declining to set aside the ex-parte decree granted in H.M.O.P.No.14 of 2009. Needless to state, if no such order has been obtained or specific orders are obtained to keep M.O.P.No.233 of 2009 in abeyance, the Family Court, Puducherry, is at liberty to proceed with the matter further and thereafter decide the same on merits and in accordance with law. In such eventuality, it is well open to the Family Court, Puducherry to fall back with its earlier findings pending in H.M.O.P.No.14 of 2009 before the Sub Court, Thindivanam, by which the decree for restitution of conjugal rights has been granted.

7. The Civil Miscellaneous Appeal stands allowed to the extent indicated above. No Costs. Consequently, M.P.No.1 of 2015 is closed. However, we make it clear that the respondent shall not send any offending letters to the employer of the appellant, as seen from the documents produced by the learned counsel appearing for the appellant in future, as they would certainly amount to cruelty.

Sd/-
Assistant Registrar(CS-IV)

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Sub Assistant Registrar

ssm

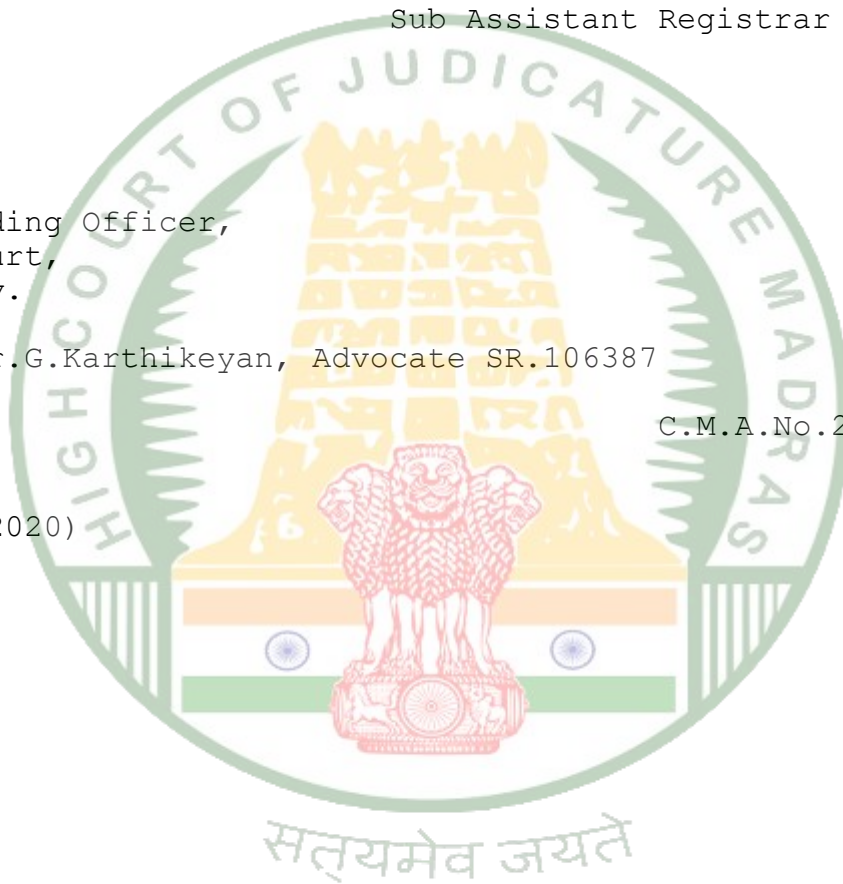
To

The Presiding Officer,
Family Court,
Puducherry.

+1cc to Mr.G.Karthikeyan, Advocate SR.106387

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RSI(CO)
CB(14/09/2020)



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