

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1715 of 2016
and
CMP.No. 12972 of 2016

V.Senthil Kumar appellant/Petitioner

Vs

Karpukkarasi respondent /Respondent

PRAYER: Civil Miscellaneous Appeal filed to set aside the fair and decreetal order dated 2.6.2016 in G.O.P.No.4 of 2016 on the file of Family Court, Karaikkal.

For appellant : Mr.Venkataswamy Babu

For respondents : Mr.S.Sounthar

J U D G M E N T
(made by K.K.SASIDHARAN, J.)

The challenge in this Civil Miscellaneous Appeal is to the decree dated 2 June 2016 in G.O.P.No.4 of 2016 on the file of the Family Court, Karaikkal, dismissing the Guardian Original petition on the ground that the parties have settled the matter before the Mediation Centre. The appellant also challenges the memorandum of compromise executed by him on the ground that he was made to sign the memorandum by the Presiding Officer without his consent.

2. The appellant initially filed M.O.P.No.52 of 2015 before the Family Court, Karaikkal for dissolution of his marriage with the respondent which was solemnized on 20 August 2010. The respondent failed to appear before the Family Court and the same resulted in passing an exparte decree of dissolution of marriage on 4 April 2016.

3. The appellant also filed an original petition in G.O.P.No.4 of 2016 to direct the respondent to handover the custody of the minor son to him. The joint memorandum of compromise dated 25 May 2016 indicates that the parties have settled the matter. The Family Court, on the basis of the settlement memo dated 25 May 2016, dismissed the guardian original petition as settled out of Court.

4. There is no challenge to the decree dated 4 April 2016 in M.O.P.No.52 of 2015.

5. When it was pointed out to the learned counsel for the parties that the proper remedy is only to approach the Family Court at Karaikkal, it was submitted that they are agreeable for deciding the original petition in M.O.P.No.52 of 2015 and G.O.P.No.8 of 2015 afresh on merits by the Trial Court, instead of taking only the Guardian original petition. The parties have also made an endorsement indicating that they are agreeable for such a course in the interest of both the parties.

6. The parties are present in Court today. The parties have made an endorsement to set aside the decree in M.O.P.No.52 of 2015 and G.O.P.No.8 of 2015 and remand the matter for fresh disposal. In view of the consensus arrived at among the parties, there is no need for a factual adjudication of the issue in this appeal.

7. The parties wanted adjudication of the issue raised in M.O.P.No.52 of 2015 and G.O.P.No.8 of 2015 by the Trial Court. In view of the joint endorsement made by the parties and countersigned by their respective counsel and in view of the peculiar background facts, we set aside the decree dated 4 April 2016 and 2 June 2016 in M.O.P.No.52 of 2015 and G.O.P.No.8 of 2015, respectively, on the file of the Family Court, Karaikkal. We direct the Family Court, Karaikkal to take up the proceedings in M.O.P.No.52 of 2015 and G.O.P.No.8 of 2015 and decide the same on merits and as per law.

8. We further direct the Family Court, Karaikkal, to dispose of both the proceedings independently and on merits, without in any way being influenced by the observation made in the judgment and decree in M.O.P.No.52 of 2015 and the joint memorandum filed in G.O.P.No.8 of 2015 and the resultant order dismissing the guardian original petition on the ground of settlement.

9. We direct the Family Court, Karaikkal, to dispose of the proceedings as expeditiously as possible and in any case on or before 30 June 2020.

10. The Civil Miscellaneous Appeal is disposed of with the above direction. No costs. Consequently, C.M.P.No.12972 of 2016 is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar

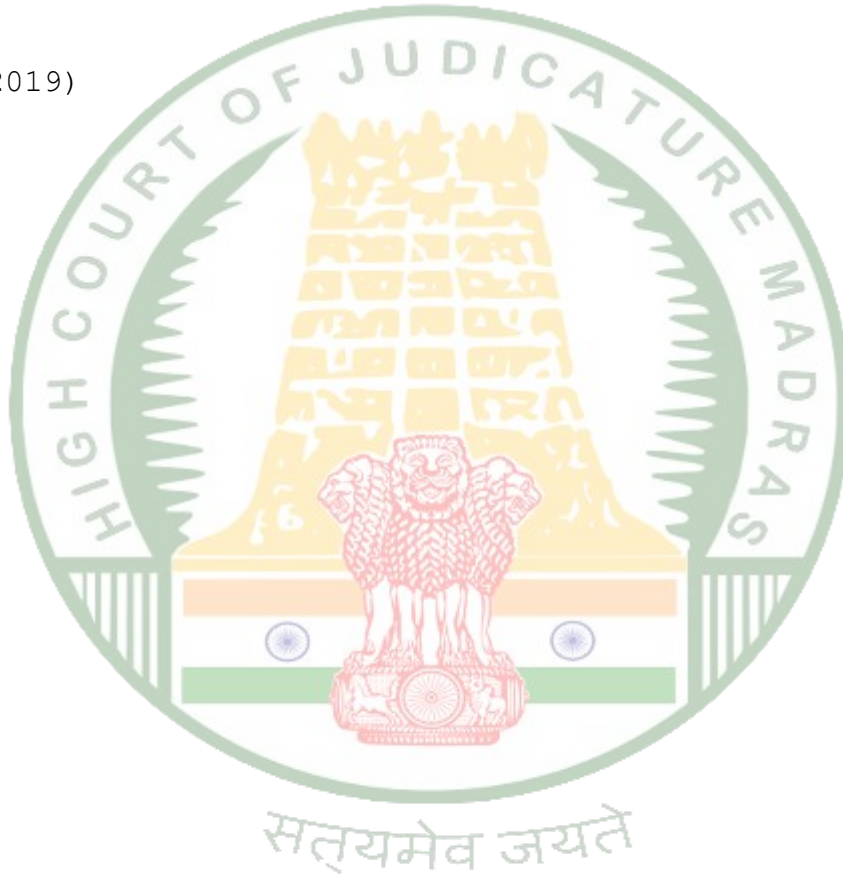
To

The Judge,
Family Court, Karaikkal.

+1cc to Mr.S.Sounthar, Advocate, S.R.No. 88619
+1cc to Mr.Venkataswamy Babu, Advocate, S.R.No. 89231

C.M.A.No.1715 of 2016

NMI (CO)
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