

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.S.A.Nos.16 & 17 of 2012

Kalaiselvi

... Appellants in both Appeals

Vs

M.R.Deivasigamani

.... Respondent in both Appeals

Common Prayer: Appeals filed under Section 28 of Hindu Marriage Act r/w 100 of C.P.C., against the award passed in CMA.Nos.60 and 61 of 2010 dated 30.11.2011 on the file of Additional District Judge cum Fast Track Court No.1, Erode, in confirming the order passed in HMOP.Nos.79 and 241 of 2008 dated 26.08.2009 on the file of Principal Sub-Judge, Erode, Erode District.

(In both Appeals)

For Appellant : Mr.V.Kadhirvelu

For Respondent : Mr.P.Murugan

in both Appeals Legal Aid Counsel

COMMON ORDER

The wife is the appellant, she had filed the petition for divorce on the ground of desertion. The husband also filed a petition for restitution of conjugal rights. The petitioner had lost her case in both the Courts below and against the said orders the above appeal was filed before this Court.

2.The case of the appellant is that the marriage was took place on 17.05.1989. A girl baby namely, Kaviya was born to the petitioner and the respondent on 10.02.1992. Thereafter, misunderstanding took place between the petitioner and the respondent, and hence the petitioner herein has given a police complaint dated 06.05.2003 against the respondent on the ground of cruelty. The respondent thereafter from 06.05.2003 neglected the family and never stayed with the petitioner and the child. Thus the respondent has deserted the family with necessary animus deserendi.

3.The case of the respondent is that the petitioner had never made any attempt or move for any conciliation or anything for re-union or divorce. The respondent is prepared and willing to live along with the petitioner and he filed petition for conjugal rights.

4.The trial Court held that the petitioner had not proved her case by letting in witness to support the oral averments and hence the divorce petition filed by the appellant was dismissed.

5.Against the order of dismissal in HMOP.Nos.79 and 241 of 2008, the present appeals were filed. The 1st appellate Court confirmed the order passed by the trial Court. Aggrieved by the same, the civil miscellaneous second appeal is filed.

6.At the time of admission, the following substantial question of law were framed by this Court:

"1.Have not courts below committed an error in not allowing the petition for divorce in view of the fact that the respondent continuously deserted his wife and children for 16 long years?

2.Have not Courts below committed an error of law in not accepting the Ex.A3 (Police complaint receipt) as a proof for cruelty?

3.Have not the Court below committed an error in not accepting the evidence of petitioner since there is no independent witness to support her evidence?"

7.The learned counsel for the appellant submitted that admittedly the parties are living separately from 06.05.2003 onwards.

8.I heard Mr.V.Kadhirvelu, learned counsel for the petitioner and Mr.P.Murugan, learned Legal Aid Counsel for the respondent in both the appeals since though notice was served on the respondent, there was no appearance and hence this Court appointed Legal Aid Advocate. I perused the entire materials available on record.

9.The learned counsel for the appellant produced the following Judgments for supporting his case 2005 (4) CTC 287, (2006) 3 SCC 778, (2005) 2 SCC 22, (2007) 4 SCC 411 and 2010 (4) SCC 393 and having regard to the judgments cited supra, the Hon'ble Supreme Court granting divorce on the ground of irretrievable breakdown of marriage. The appellant has also proved his case for divorce on the ground of irretrievable breakdown of marriage. Admittedly, both the parties are living separately from 2003 onwards i.e., for the past 16 years and the marriage has become dead and no useful purpose would be achieved in keeping the marriage alive. Hence, the appellant is entitled

to decree of divorce on the ground of irretrievable breakdown of marriage and substantial question of law No.2 is answered in favour of the appellant.

10.In the result, both the appeals are allowed and the judgment and decree passed in CMA.Nos.60 and 61 of 2010 dated 30.11.2011 on the file of learned Additional District Judge cum Fast Track Court No.1, Erode, in confirming the order passed in HMOP.Nos.79 and 241 of 2008 dated 26.08.2009 on the file of the learned Principal Sub-Judge, Erode, Erode District, are set aside by granting divorce to the appellant. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

vs

To

1.The Additional District Judge cum
Fast Track Court No.1, Erode.

2.The Principal Sub-Judge, Erode,
Erode District.

3. The Member Secretary,
Legal Services Authority,
High Court, Madras

Copy To

The Section Officer, VR, Section, High Court, Madras

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PA (CO)

GMV (10/06/2019)

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