

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH  
AND  
THE HONOURABLE MR. JUSTICE C.SARAVANAN

C.M.A. No. 2674 of 2016

A.Ayyandhurai ...Appellant

Vs.

Pavithra ... Respondent

Prayer : Appeal filed under Section 19(1) of the Family Courts Act, 1984 against the order in F.C.H.M.O.P.No.86 of 2016 dated 22.10.2016 on the file of the Family Court, Dharmapuri.

For Appellant : Mr.A.Sakthivel

For Respondent : No appearance

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

Heard the learned counsel appearing for the appellant. Despite service of notice, none appeared on behalf of the respondent.

2. The appellant is the husband. The petition for divorce has been filed on the ground of cruelty. It is, inter alia, alleged in the petition that the respondent has refused to co-habitate and she was in relationship with some other person.

3. Before the Family Court, the appellant has examined himself as PW1 and marked Exs.P1-P3. The respondent was set exparte. The Court below dismissed the petition filed on the ground that no case has been made out for desertion. It is a case where the appellant has specifically averred that she was not willing for co-habitation and thus refused to consummate the marriage. The further allegation is with respect to adultery.

The Court below has misdirected itself in holding that the mere failure of the respondent in joining the appellant cannot be construed as a mental cruelty.

4. It appears that the respondent is not willing to rejoin with the appellant. The averments made are neither denied or disputed. The appellant has also gone into the box and deposed in tune with the averments made. In such view of the matter, we are of the view that the order of the Family Court is to be interfered with.

Accordingly, the order of the Court below is set aside and the appeal stands allowed. There shall be a decree of divorce as prayed for by the appellant. No costs.

Sd/-

Assistant Registrar(CCC)

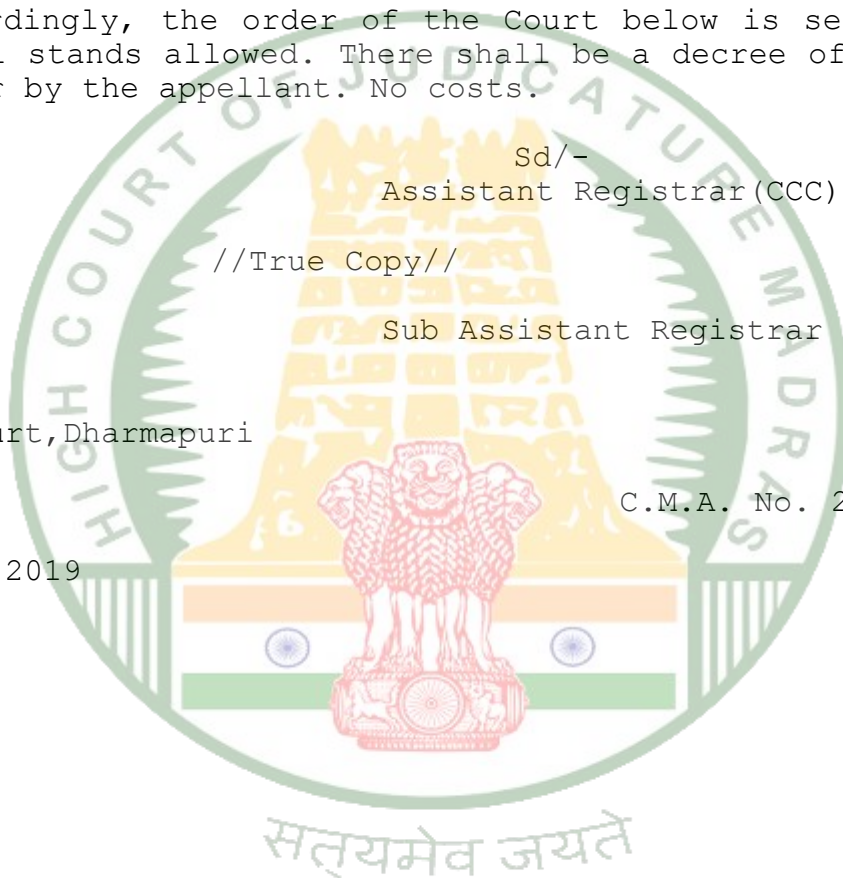
//True Copy//

Sub Assistant Registrar

To:  
The Judge,  
Family Court, Dharmapuri

CNR(CO)  
CSL/17.05.2019

C.M.A. No. 2674 of 2016



WEB COPY