

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2019

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.S.A.No.12 of 2016

Madavan ... Appellant/Appellant/Respondent
-vs-

Mohanasundari ...Respondent/Respondent/Petitioner

Memorandum of Grounds of Civil Miscellaneous Second Appeal filed under Section 28 of Hindu Marriage Act read with Section 100 of C.P.C. against the judgment and decree dated 11.12.2015 made in CMA.7/13 on the file of the District Judge, Nagapattinam, dismissing the appeal and confirming the judgment and decree dated 21.03.2013 made in HMOP.No.124/2010 on the file of the Principal Sub-Court, Mayiladuthurai.

For Appellant :: Mr.N.Nissar Ahmed

For Respondent :: Mr.S.Sounthar

JUDGMENT

The present Civil Miscellaneous Second Appeal has been filed under Section 28 of Hindu Marriage Act read with Section 100 of C.P.C. against the judgment and decree dated 11.12.2015 made in CMA.7/13 on the file of the District Judge, Nagapattinam, dismissing the appeal and confirming the judgment and decree dated 21.03.2013 made in HMOP.No.124/2010 on the file of the Principal Sub-Court, Mayiladuthurai.

2. The brief facts of the case are that after the marriage between the appellant and the respondent was solemnized on 25.8.2000, they were separated in 2010. Therefore, the wife-respondent moved the Principal Subordinate Court, Mayiladuthurai seeking restitution of conjugal rights in H.M.O.P.No.124/2010. A counter affidavit has been filed by the appellant husband alleging that the wife has been giving mental torture, speaking more and going beyond the limit and sometimes used to threaten the respondent/appellant that she would be committing suicide if the respondent is not listening to her request. The trial court after taking note of the pros and cons of both sides finding some merit on the petition filed for restitution of conjugal rights allowed the application granting restitution of conjugal

rights. As against that the appellant herein-husband has filed CMA.No.7/2013 before the District Judge, Nagapattinam adding one more ground that the respondent wife is having illicit intimacy with her sister's husband that was not even pleaded before the trial court. Therefore, the learned I Appellate Court has disallowed the appeal. As against the same, the present Civil Miscellaneous Second Appeal has been filed.

3. Heard the learned Counsel on either side and I have also perused the materials available on record carefully.

4. In the grounds of appeal memorandum, the learned Counsel for the appellant has given the following two substantial questions of law for consideration by this Court:

a. Whether the courts below are right in holding that the respondent is entitled to scold the appellant for not earning money; and

b. Whether the courts below erred in not seeing that the harassment made by the respondent threatening suicide is a good cause for not living with the respondent.

5. On a mere reading of the above, this Court is of the view that there is no question of law much less a substantial question of law involved in this Second Appeal. That apart, since it is represented that the appellant and the respondent are having two children one aged about 20 years and another one at 10 years and they are also opposing for their parents separation, this Court is not inclined to interfere with the concurrent findings of the courts below.

6. In view of the above, the Civil Miscellaneous Second Appeal fails and the same is accordingly dismissed. No costs.

Sd/-

Assistant Registrar (CO)

//True copy// सत्यमेव जयते

Sub Assistant Registrar

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To

1. The Principal Sub-Judge, Mayiladuthurai.

2. The District Judge, Nagapattinam.

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Copy To: The Section Officer, V.R. Section, High Court, Madras.

+1cc to Mr.S.Sounthar, Advocate SR.No.55784

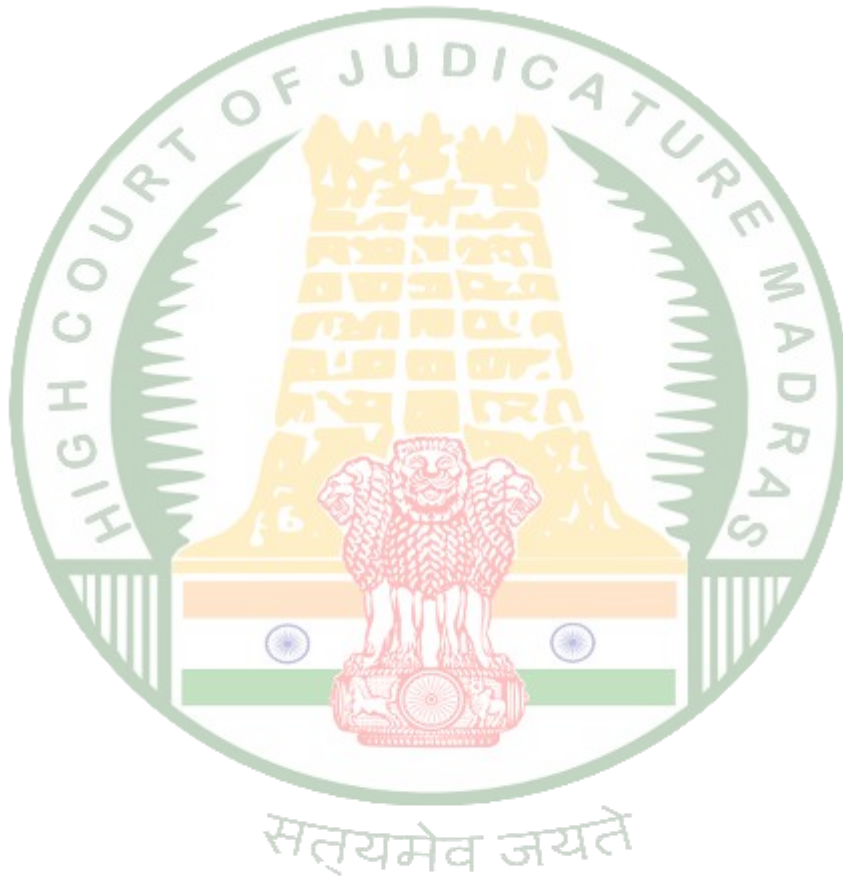
+1cc to Mr.N.Nissar Ahmed, Advocate SR.No.55709

C.M.S.A.No.12 of 2016

SVI (CO)

GMV (16/08/2019)

GMV (09/09/2019)



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