

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2019

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

C.M.S.A.No.25 of 2014

Padmavathy

.. Appellant/Respondent

Vs

Harikumar

.. Respondent/Petitioner

Prayer : Civil Miscellaneous Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 20.12.2013 made in H.M.C.M.A.No.4 of 2010 on the file of the II Additional District and Sessions Judge, Vellore at Ranipet, Vellore District, reversing the judgment and decree dated 29.06.2009, made in H.M.O.P.No.27 of 2007 on the file of the Subordinate Judge, Ranipet.

For Appellant : Mr.S.Mukunth
for M/s.Sarvabhauman Associates

For Respondent : Mr.G.Poonkundran

JUDGMENT

This Appeal is directed against the judgment and decree dated 20.12.2013, passed in H.M.C.M.A.No.4 of 2010 by the learned II Additional District and Sessions Judge, Vellore at Ranipet, Vellore District, reversing the judgment and decree dated 29.06.2009, passed in H.M.O.P.No.27 of 2007 by the learned Subordinate Judge, Ranipet.

2. Learned counsel appearing for the appellant/wife submitted that the marriage between the appellant/wife and the respondent/husband was solemnized on 08.06.1997 as per the Hindu's Customs and Rites and thereafter, they were blessed with two male children. Now, the first son aged about 22year has completed B.E. degree and the second son aged about 19 years is studying 2nd year B.E. degree. Since the respondent/husband was sexually harassing her besides demanding dowry, she left the matrimonial home and she is presently living with her children. After the appellant/wife left the home, the respondent/husband issued a lawyer's notice dated 07.12.2006 calling upon her to come and live with him jointly, failing which, give a consent

for mutual divorce. Even thereafter, she did not go back to the matrimonial home apprehending life threat and finally, the respondent/husband filed H.M.O.P.No.27 of 2007 under Section 9 of the Hindu Marriage Act, praying to grant decree for restitution of conjugal rights. Although the learned trial Court has rightly refused to grant the said prayer, when appeal was preferred, the learned first appellate Court wrongly reversed the same forgetting the factum of torture and cruelty faced by her for dowry at the hands of the appellant/husband. Therefore, it is contended, if she is allowed to live with her husband, then her life would be under threat, hence, the judgment and decree passed by the learned first appellate Court granting decree for restitution of conjugal rights is liable to be set aside.

3. Per contra, it is submitted by the learned counsel for the respondent/husband that before the learned trial Court, the appellant/wife has filed a counter affidavit stating that there is no possibility of reunion. However, she did not even file an application for divorce and on the other hand, seeking maintenance, she has also filed a case in M.C.No.9 of 2005, whereby, the learned Judicial Magistrate, Tiruttani, vide order dated 09.05.2007, directed the husband to pay a sum of Rs.1000/- towards monthly maintenance and further directed to pay a sum of Rs.5,000/- per annum towards educational expenses of the children. Since the appellant/wife has expressed her unwillingness to go and live with her husband, the judgment and decree passed by the learned first appellate Court granting decree for restitution of conjugal rights has become unworkable. It is further submitted that when the learned trial Court has wrongly refused to grant the prayer for restitution of conjugal rights, the learned first appellate Court has rightly reversed the same by holding that the appellant/wife has not made out a case for desertion with supporting material evidence and on this score, he sought for confirming the judgment and decree passed by the learned first appellate Court.

4. I fully agree with the above said submissions of the learned counsel for the respondent/husband.

5. In order to settle the issue amicably, on two occasions i.e. on 04.07.2019 and 16.07.2019, this Court listed the matter in the chamber for appearance of the parties and on those two occasions, the appellant/wife has not shown any interest for reunion. Therefore, this Court is constrained to dispose of the case based on the materials available before it.

6. It is an admitted case of the appellant/wife that she had left the matrimonial home after giving birth to two male children and now, the first son, aged about 22years, has

completed B.E. degree and the second son, aged about 19 years, is studying 2nd year B.E. degree. Both are staying with their mother. It is also seen that when the respondent/husband filed an application under Section 9 of the Hindu Marriage Act seeking restitution of conjugal rights before the learned trial Court, the appellant/wife filed a counter affidavit categorically refusing to accept the reunion with the respondent/husband. When the appellant/wife refused to accept the reunion, then it is a fit case for filing an application for divorce. But, although she had filed an application for maintenance, she had failed to file an application seeking divorce. Such an intention/attitude of the appellant/wife goes to show that she is interested only in getting money from him, but not interested in living with him to lead a peaceful life along with two children.

7. Further, it is seen that the respondent/husband had sent a legal notice dated 07.12.2006 calling upon the appellant/wife to come and live with him jointly, failing which, give a consent for mutual divorce. On receipt of such notice, she had neither given mutual consent nor filed any application seeking for divorce nor replied to him stating the reasons for her unwillingness to live with him. Therefore, such conduct of her goes to show that she does not have any intention to divorce her husband. Secondly, a mere perusal of the records available before this Court show that she has not made out a case for desertion with supporting materials and therefore, in my considered view, it is a clear case for reunion atleast for the welfare of two male children, who are aged about 22 and 19 years respectively.

8. In such view of the matter, this Court, finding that no question of law much less substantial question of law arises for consideration, is inclined to dismiss the Civil Miscellaneous Second Appeal and accordingly, it is dismissed confirming the judgment and decree passed by the learned first appellate Court. No Costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

rkm

To

1. II Additional District and Sessions Judge,
Vellore at Ranipet.

2. Subordinate Judge, Ranipet.

+1cc to Mr.Sarvabhauman Associates, Advocate, S.R.No. 60915

C.M.S.A.No.25 of 2014

PA (CO)
GN (24/01/2020)