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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

C.M.S.A.No.17 of 2017

Lakshmanan

...Appellant

versus

Pattammal

...Respondent

Prayer: Civil Miscellaneous Second Appeal filed under Section 28 of the Hindu Marriage Act r/w Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 07.10.2014 passed in C.M.A.No.1 of 2014 on the file of the learned Principal District Judge, Krishnagiri thereby reversing the judgment and decree passed in H.M.O.P.No.62 of 2012 dated 04.12.2013 of the learned Principal Subordinate Judge, Krishnagiri and allow the appeal.

For Appellant : Mr.K.Thiruvengadam

For Respondent : Mr.S.C.Vishwanth

J U D G M E N T

The petitioner (Lakshmanan) is the husband of the respondent (Pattammal) herein, has filed the present Civil Miscellaneous Second Appeal, to set aside the judgment and decree dated 07.10.2014 passed in C.M.A.No.1 of 2014 on the file of the learned Principal District Judge, Krishnagiri, and thereby reversing the judgment and decree passed in H.M.O.P.No.62 of 2012 dated 04.12.2013 on the file of the learned Principal Subordinate Judge, Krishnagiri.

2. The learned counsel for the appellant would submit that the marriage between the appellant and respondent was solemnised on 27.03.1985 at respondent's house at Kandhikuppam Village, Krishnagiri Taluk. After four months of marriage, the appellant got job as Conductor on 05.06.1985 in the Government Transport Corporation, Trichy and settled there. However, after two months, the respondent (wife) made a false complaint against the appellant (husband) stating that he had illicit relationship with her uncle's daughter. After the said false complaint, the



respondent (wife) requested the appellant to send to her parental home and he also sent her. After 10 days, in front of Panchayatars, the respondent was asked to come back to the matrimonial home, she refused to live with the appellant.

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3. Thereafter, the respondent has filed a petition seeking maintenance from the appellant before the Hon'ble Chief Judicial Magistrate, Krishnagiri, and as per the order passed, Rs.500/- per month, as maintenance has been paid by the appellant. Even after receipt of maintenance, when she refused to come and live with the appellant, he has filed H.M.O.P.No.62 of 2012 under Section 13(1),(i) of the Hindu Marriage Act, seeking dissolution of marriage happened between them on 27.03.1985.

4. The learned trial Judge after taking note of the conduct of the parties that both the appellant and respondent admitted the marriage happened between them on 27.03.1985 and lived happily only for a period of one year and after that they developed family petty quarrels and both of them have been living separately for more than 27 years and there is no chance to reunion and thereby, the learned Principal Subordinate Judge, Krishnagiri, granted divorce. Aggrieved over the same, the respondent has filed C.M.A.No.1 of 2014 before the learned Principal District Judge, Krishnagiri.

5. Taking note of a crucial aspect that after four years from the date of marriage, when the respondent was staying with her parental home, the appellant got second marriage without dissolution of marriage, which was solemnised on 27.03.1985, the learned First Appellate Court reversed the decree and judgment of the trial Court, as against which, the present Civil Miscellaneous Second Appeal has been filed, raising the substantial questions of law;

"a. Whether the judgment and decree of the First Appellate Court reversing the fair and decreetal order of the trial Court though there is no single attempt on the part of the respondent for reunion for so many years except getting maintenance from 2000 is valid?

b. Whether the judgment and decree of the First Appellate Court are legally sustainable as the respondent had specifically proved that the appellant has deserted her and she has taken steps to rejoin the matrimonial home without any supporting material dismissing the above HMOP is legally valid one?



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c. Whether the judgment and decree of the First Appellate Court is legally sustainable in the event of admission of the respondent that she is living separately for more than 27 years and there is no dowry demand, harassment, mental cruelty by the appellant, the First Appellate Court is right in holding that the respondent had proved her case and the only allegation without any supporting oral or documentary evidence is valid one is correct or not?"

6. Admittedly, the learned counsel for the appellant would submit that the appellant married the respondent on 27.03.1985 and lived happily for a period of one year only, due to desertion made by the respondent living separately with her parental home for about four years, he got second marriage and also got 4 children. When they were living separately for 27 long years supports the claim of the appellant for divorce. However, this Court is not able to find any merits whatsoever or to justify the act of contracting the second marriage by the appellant on the ground that he would live separately for four years from the date of marriage.

7. In the present case, admittedly, the appellant after driving the respondent to her parental home, conveniently paying only Rs.500/- per month, as maintenance and never took any steps whatsoever and without even taking steps for restitution of conjugal rights, he has contracted the second marriage. After contracting the second marriage, he has filed a petition for divorce in H.M.O.P.No.62 of 2012 seeking dissolution of marriage, which is not wholly accepted by any Court of law.

8. Therefore, for the reasons mentioned above, the Civil Miscellaneous Second Appeal fails and dismissed. The judgment and decree passed by the First Appellate Court is hereby confirmed. However, there is no order as to costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sri



To

1. The Principal District Judge,
Krishnagiri.

2. The Principal Subordinate Judge,
Krishnagiri.

+1 cc to M/s.K.Thiruvengadam, Advocate, S.R.No.51916

+1 cc to M/s.S.C.Viswanth, Advocate, S.R.No.51082

C.M.S.A.No.17 of 2017

MR(CO)

SSM(23/09/2019)