

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2019

CORAM:

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

C.M.A. No. 3058 of 2017

K.Suresh ... Appellant/ Petitioner

vs.

D.Kala ... Respondent/ respondent

Prayer: Appeal filed under Section 19 of Family Courts Act, praying to set aside the fair and decreetal order dated 01.04.2016 passed in F.C.O.P.No.254 of 2009 on the file of Family Court, Salem.

For Appellant : Mr.S.Subbiah, S.C., for
Mr.P.Raja

For Respondent :NA

JUDGMENT

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

The above Civil Miscellaneous Appeal is filed challenging the order dated 01.04.2016 passed in F.C.O.P.No.254 of 2009 on the file of the Family Court, Salem.

2. Heard the learned Senior Counsel appearing for the appellant.

3. When the matter came up for hearing on the last occasion i.e., on 13.02.2019, unfortunately, there was no representation for the respondent and hence, the same stands posted today. Even today, there is no representation for the respondent. Therefore, we are proceeding with the matter on merits.

4. The appellant is the husband. Seeking to dissolve the marriage between the appellant and the respondent on the ground of cruelty and desertion, FCOP No.254 of 2009 on the file of Family Court, Salem, has been filed under Sections 13(1)(i-a) and (i-b) of Hindu Marriage Act, 1955

5. The marriage between the appellant and the respondent took place in the year 2005. According to the appellant, the respondent left the matrimonial home on 15.07.2007 and thereafter, she refused to come back.

6. The Family Court, Salem, passed an order of judicial separation after holding that the case of desertion is made out. However, having come to the aforesaid conclusion, instead of granting a decree for divorce, the relief of judicial separation was ordered, though not asked for. This decision of the Family Court is put under challenge before this Court.

7. The order passed by the Family Court, Salem, based upon the findings regarding desertion has attained finality. Admittedly, the respondent has not chosen to challenge it. The only grievance of the appellant is that the Family Court, Salem, has misdirected itself in granting an order of judicial separation as against the divorce.

8. This Court finds considerable force in the submission made. Having found that the respondent has deserted the appellant, the Family Court ought to have granted divorce. On the contrary, it has granted judicial separation which was neither asked for by the appellant nor the respondent. In such a case, there is no jurisdiction lies with the Family Court to pass such an order. We are of the view that the desertion has taken place in the year 2007 and more than a decade has gone by. We are not inclined to accept the reason given by the Family Court that only because of the litigation, the respondent could not join the appellant as if there is no material to substantiate the order supported by sufficient pleadings. Therefore, we are inclined to interfere with the order passed by the Family Court in ordering judicial separation as against the decree for divorce. Accordingly, the order passed by the Family Court, Salem, in FCOP No.254 of 2009 on 01.04.2016 stands set aside. Consequently, the petition filed by the appellant on the ground of divorce stands allowed and there shall be a decree for divorce. Accordingly, the civil miscellaneous appeal stands allowed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

raa

To:
The Judge,
Family Court,
Salem.

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

+1cc to Mr.P.Raja , Advocate SR.No. 13747

C.M.A.No. 3058 of 2017

A.SK(22/07/2019)



WEB COPY