



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.10.2019

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE P.T. ASHA

CMSA(MD).No.40 of 2011

V. Manoharan .. Appellant/ Appellant /Petitioner
Vs.
Saranya ... Respondent/Respondent/Respondent

PRAYER: This Civil Miscellaneous Second Appeal is filed under Section 28 of Hindu Marriage Act r/w. 100 CPC against the order dtd 11.03.2011 made in HMCMA.No. 5 of 2010 on the file of I Additional District Judge, Madurai confirming the order dated 31.08.2010 made in HMOP.No.481 of 2009 on the file of 3rd Additional Sub Court, Madurai.

For Appellant : Mr. Sundaravathanam
for Mr.B.Vijayakarthiskeyan
For Respondent : Mr. D. Venkatesh

JUDGMENT

The un-successful husband before the Courts below is the appellant before this Court. The appellant had filed HMOP.No. 481 of 2009, on the file of the III Additional Subordinate Court, Madurai, seeking divorce from his wife / respondent herein. From reading of the petition that has been filed for divorce, it appears that the appellant / petitioner has suspicion over the conduct of the respondent / wife. The petitioner has gone even to the extent of denying paternity of the child. The respondent / wife has filed a counter denying the allegations raised in the petition and further contending that she had lead a normal matrimonial life with her husband and not refused physical intimacy with the appellant / husband herein. It is also seen that the petitioner had challenged the paternity of the child in I.A.No.481 of 2009 and DNA test has been conducted. The DNA test went against the appellant herein and therefore, both the Courts below dismissed the application on the ground that the cause of action as pleaded by the appellant has not been proved. Challenging the said orders, the present Civil Miscellaneous Second Appeal filed by the appellant / husband.

2. The learned counsel appearing for the appellant would reiterate the averments made in the appeal and the same has been refuted by the counsel for the respondent.



3. Heard the counsels and perused the papers.

4. The appellant has come forward with the case that his wife had illegal contact with her ex lover and therefore, the child born to his wife is not his child. He also contended that his wife had no physical intimacy with him. However, the report of the DNA test has clearly proved that the said contentions are totally false.

5. The entire cause of action for the suit was only to the effect that the appellant had suspected the fidelity of the respondent / wife and also refuted the paternity of the child. The Courts below have clearly held that the said fact has not been proved by the petitioner / husband either by examining third party witnesses or through any kind of documentary evidence on the contrary the DNA test reveals that he is the father. Hence, I do not find any reason to interfere with the orders passed by the Courts below.

6. Accordingly, this Civil Miscellaneous Second Appeal is dismissed. No costs.

Sd/-

Assistant Registrar (co)

// True Copy //

Sub Assistant Registrar(CS)

trp

To

1. I Additional District Judge, Madurai

2.III Additional Sub Court, Madurai.

+1 CC to Mr.B.VIJAYAKARTHIKEYAN, Advocate (SR-91991[F] dated 15/10/2019)

+1 CC to Mr.D.VENKATESH, Advocate (SR-92158[F] dated 16/10/2019)

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