



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.09.2019

CORAM

WEB COPY

THE HONOURABLE **MS.JUSTICE P.T.ASHA**

C.M.S.A.(MD)No.22 of 2010

K.Sivasubramanian ... Petitioner/Appellant/Appellant

Vs.

1.Chellaponnu

2.Velmurugan

... Respondents/Respondents/Respondents

PRAYER:- Civil Miscellaneous Second Appeal is filed under Section 28(1)(2) of the Hindu Marriage Act r/w Section 100 C.P.C., against the order in C.M.A.No.10 of 2007 dated 12.03.2010 on the file of the Principle District Judge, Dindigul which it was confirmed in H.M.O.P.No.48 of 1995 dated 12.08.2005 on the file of the Principle Sub Judge, Dindigul.

For Petitioner : Mr.J.Gunasheelan Muthiah

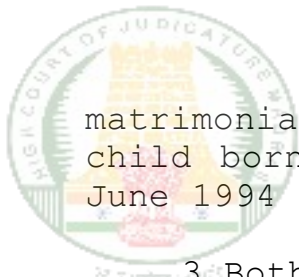
For R1 : Mr.K.Elangovan

R2 dismissed

JUDGMENT

The husband is the appellant before this Court. He is challenging a concurrent judgment dismissing his petition seeking dissolution of the marriage between him and the respondent herein on the ground of adultery.

2.The appellant in his petition contended that the respondent had lived with him for just 60 days and had thereafter, left her matrimonial home on 08.06.1992 and she returned to her parents home. He would also contend that she had initially agreed for divorce on mutual consent but have thereafter some lack on her promise the appellant would further contend that the respondent was living with the second respondent and therefore, it was not possible to continue with the marriage. The respondent herein filed a counter stating that the appellant herein continuously harassed her and he did not treat her properly. She would submit that she faced many hardship at the matrimonial home and was subject to constant abuse. She would submit that it is only ~~account of the~~ conduct of the appellant that she has left her



matrimonial home. In fact out of the wed-lock, there was a male child born and that she had been living with the appellant till June 1994 and thereafter, she left her husband.

3.Both the Courts below had, after taking into consideration all the facts on record come to the conclusion that the appellant has not proved his case and had dismissed his H.M.O.P and subsequent appeal filed by him in C.M.A.No.10 of 2007 on the file of the Principal District Court, Dindigul, also ended in dismissal. Challenging the said order, present appeal is preferred before this Court.

4.In the appeal, the appellant's counsel contended that the respondent / wife had not lived with the appellant after 08.06.1992 and the Courts below have failed to consider the continued desertion from 08.06.1992 onwards.

5.A perusal of the judgement of the Courts below would clearly show that the appellant has not proved his case that his wife was living an adulterous life and he has not even corroborated the said allegation by examining any independent third party witness. Further it is the case of the wife that the appellant was abusing her and on that ground the wife stay away from the house of the appellant and the same cannot be termed as desertion.

6.The Court below considered the evidences and came to the conclusion that the husband has not been treating his wife properly and he has not proved his case. Therefore, there is no infirmity in the order passed by the Courts below.

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

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

gns

To

1.The Principle District Court,

Dindigul

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Principle Sub Court,
Dindigul.

Copy to
The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai-2 copies

+1 CC to M/s.K.ELANGOVAN, Advocate (SR-87727[F] dated
19/09/2019)

+1 CC to M/s.J.GUNASEELANMUTHIAH, Advocate (SR-87210[F] dated
17/09/2019)

C.M.S.A. (MD) No.22 of 2010
17.09.2019

KM/(18.10.2019) 3P 7C