



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.09.2019

CORAM :

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

C.M.S.A. (MD) No.45 of 2010

and

M.P. (MD) Nos.1 and 2 of 2010

V.Shylajakumari

... Appellant

vs.

G.Srikumaran

... Respondent

Prayer:- This Appeal is 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 31.08.2010 made in CMA.No.16 of 2010 on the file of the learned District Judge, Kanyamumari at Nagercoil confirming the judgment and decree dated 17.02.2010 made in HMOP.No.48 of 2007 on the file of the learned I Additional Subordinate Judge, Nagercoil.

For Appellant : Mrs.N.Krishnaveni senior counsel for
Mr.P.Thiagarajan
For Respondent : Mr.K.Sreekumaran Nair

JUDGMENT

This Civil Miscellaneous Second Appeal is filed by the appellant/wife challenging the concurrent judgment and decree, granting a decree for divorce to the respondent despite the fact that the learned I Additional Subordinate Judge, Nagercoil, was not vested with the jurisdiction to try the petition for divorce filed by the respondent/husband.

2.This Court is not going into the merits of the order under appeal since the lack of jurisdiction hits at the very basis of the case.

3.The respondent/husband had filed HMOP.No.48 of 2007 on the file of the learned I Additional Subordinate Judge, Nagercoil on account of the fact that the respondent/husband and the appellant/wife last lived together at Nagercoil. This statement has been reiterated in the said petition at paragraph No.9, where, the respondent stated as follows:

Before the date of desertion, the petitioner and the respondent were lived at Nagercoil for few months.



The said statement is once again reiterated in the said petition at paragraph No.19, wherein, the following statement as follows:

The date of reply, which arose at Nagercoil, wherein, the petitioner and the respondent lastly resided for few months.

4.The appellant/wife had raised the preliminary objections to the petition in HMOP.No.48 of 2007 for divorce filed by the respondent/husband before the learned I Additional Subordinate Judge, Nagercoil, by contending that the entire cause of action arises only at Bangalore, where the parties had resided together lastly and there has been a categoric statement by the wife that they have never lived together at Nagercoil even for a day and therefore, there is lack of territorial jurisdiction for I Additional Subordinate Judge, Nagercoil, to entertain the said petition.

5.To defend the case, the respondent/husband had stated as follows:

It is humbly submitted that the respondent/husband cannot speak or read Kannada the local language and can speak only in Malayalam and Tamil. Her mother and all of her brothers are settled and residing in native place in Kanyakumari District. It is stated in counter statement para 10 that both the parties never lived at Nagercoil. It is a false statement. Many days during pregnancy period of son and daughter and other period both petitioner and the respondent lived in Nagercoil and both son and daughter were born in Nagercoil. As stated in the petition, the petitioner resides in Nagercoil and this Hon'ble Court alone is having jurisdiction to entertain the petition.

6.After hearing the arguments made on either side, the learned I Additional Subordinate Judge, Nagercoil, has allowed the HMOP.No.48 of 2007 without considering the issue of jurisdiction. The issue of jurisdiction was not even framed as an issue for consideration. Challenging the said judgment, the respondent/wife had filed CMA.No.16 of 2010 before the learned District Judge, Kanyamumari at Nagercoil.

7.The ground of challenge was the lack of inherent jurisdiction of the learned I Additional Subordinate Judge, Nagercoil. The learned District Judge, Kanyamumari at Nagercoil also did not consider the issue of jurisdiction and it was not even raised as a point for consideration. The learned Judge heard the arguments on either side and confirmed the jurisdiction exercised by the learned I Additional Subordinate Judge, Nagercoil, on the ground that the respondent/wife has not raised the issue of jurisdiction as a



preliminary issue before the commencement of trial.

8.The learned District Judge had also relied on the findings of the Court below that the parties had lived together for some time at Kumarapuram Naduvoorkarai, which is situated within the jurisdiction of the Court below and further proceeded to state that though the respondent/wife had contended that the Kumarapuram Naduvoorkarai does not fall within the jurisdiction of Nagercoil and the same falls within the jurisdiction of Padmanabhapuram, no document has been produced to prove the same. Ultimately, the appeal in CMA.No.16 of 2010 was dismissed. Challenging the same, the appellant/wife is before this Court.

9.The arguments were advanced on the issue of jurisdiction. Heard the learned counsel on either side and perused the papers.

10.On perusal of the petition for divorce, it is seen that the respondent/husband had invoked the jurisdiction of Sub Court, Nagercoil, only on the ground that the husband and wife had at last resided together at Nagercoil. The said fact has been refuted by the appellant/wife by stating that they had at last resided at Bangalore and in this regard, the appellant/wife would rely the contentions of the respondent/husband, who has himself admitted in the petition for divorce that he has been working at Kuwait and thereafter, he had returned to India and on 20.07.2005, the appellant/wife deserted him as he was unable to generate money. She would further rely the contention of the respondent/husband that the appellant/wife is residing in her residence at Bangalore, where he was also residing together with her and she had purchased the land and buildings.

11.Further, it is seen that the respondent/husband would submit that the Sub Court, Nagercoil, had jurisdiction to try the petition for divorce filed by him on account of the fact that he and his wife had lived together at Nagercoil for a brief period before the desertion. The address at Nagercoil was not there permanent. The Courts below have not raised an issue regarding jurisdiction. Section 19 of the Hindu Marriage Act, 1955 reads as follows:

19.Court to which petition shall be presented: Every petition under this Act shall be presented to the District Court within the local limits of whose ordinary original civil jurisdiction:-

(i) the marriage was solemnized or
(ii) the respondent, at the time of the presentation of the petition, resides, or

(iii) the parties to the marriage last resided together, or

(iii) (a) in case the wife is the petitioner, where she is residing on the date of presentation of the



petition, or

(iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is at that time, residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of him if he were alive.

12.From a reading of the above Section, it is clear that the respondent/husband, who is the petitioner in HMOP.No.48 of 2007 has pleaded that he and the petitioner/wife lived for a few months in Nagercoil only to confer the jurisdiction on the Sub Court, Nagercoil. The same is not proved by letter in evidence particularly when it was denied by the petitioner and taken up as a primary defence. Considering the fact that the decree passed by the District Judge, Kanyakumari suffers from a lack of jurisdiction, the said decree is a nullity and the same cannot be sustained, the Courts below particularly the Sub Court, Nagercoil, ought to have framed the issue with reference to the jurisdiction. Both the Courts below have failed to do so and consequently, the judgment and decree, which is a nullity, has to be passed.

13.In view of the foregoing discussions, this Civil Miscellaneous Second Appeal is allowed and the judgment and decree in CMA.No.16 of 2010 on the file of the learned District Judge, Kanyamumari at Nagercoil confirming the judgment and decree in HMOP.No.48 of 2007 on the file of the learned I Additional Subordinate Judge, Nagercoil, dated 17.02.2010, is hereby set aside. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-I)

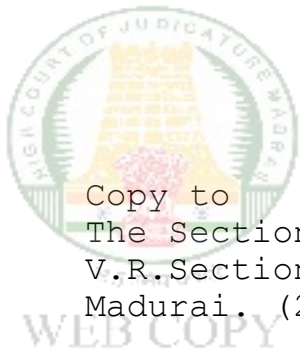
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Sub Assistant Registrar(CS)

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To

1.The District Judge,
Kanyakumari,
Nagercoil.

2.The I Additional Subordinate Judge,
Nagercoil.



Copy to
The Section Officer,
V.R. Section, Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1CC TO MR.K.SREEKUMARAN, Advocate Sr. No.89671

+1CC TO MR.P.THIAGARAJAN, Advocate Sr. No. 90185

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26.09.2019

SV-II (CO)
TR(20.11.2019) 5P 7C