



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.08.2019

CORAM

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THE HONOURABLE MR. JUSTICE **S. S. SUNDAR**

C.M.S.A. (MD) Nos. 36 and 37 of 2019

Muniasamy : Appellant/Appellant/Petitioner-Husband
in both appeals

vs.

Poopandi : Respondent/Respondent/Respondent-Wife
in both appeals

PRAYER in C.M.S.A. (MD) No. 36 of 2019: Civil Miscellaneous Second Appeal filed under Section 28 of Hindu Marriage Act r/w Section 100 of Code of Civil Procedure, to set aside the fair and decreetal order, made in H.M.C.M.A.No.7 of 2017 on the file of the Additional District Court, Paramakudi, dated 31.01.2019, confirming the fair and decreetal order made in H.M.O.P.No.100 of 2015 on the file of the Subordinate Court, Paramakudi, dated 09.10.2017.

PRAYER in C.M.S.A. (MD) No. 37 of 2019: Civil Miscellaneous Second Appeal filed under Section 28 of Hindu Marriage Act r/w Section 100 of Code of Civil Procedure, to set aside the fair and decreetal order, made in H.M.C.M.A.No.8 of 2017 on the file of the Additional District Court, Paramakudi, dated 31.01.2019, confirming the fair and decreetal order made in H.M.O.P.No.106 of 2013 on the file of the Subordinate Court, Paramakudi, dated 09.10.2017.

For Appellant in both appeals : Mr. S. Deenadhayalan

COMMON JUDGMENT

These appeals have been preferred by the husband, who is the respondent in H.M.O.P.No.106 of 2013 on the file of the Subordinate Court, Paramakudi, which was filed by the wife for divorce.

2. The appellant is the husband and the respondent is the wife and the marriage between them took place on 08.06.2006. On the ground of cruelty, the wife filed a petition in H.M.O.P.No.106 of 2013 before the Subordinate Court, Paramakudi. The appellant also filed a petition in H.M.O.P.No.100 of 2015 before the Subordinate Court, Paramakudi, for restitution of conjugal rights, under Section 9 of the Hindu Marriage Act. Both petitions were tried together by



the learned Subordinate Judge, Paramakudi, and allowed the petition filed by the wife and dismissed the petition filed by the husband.

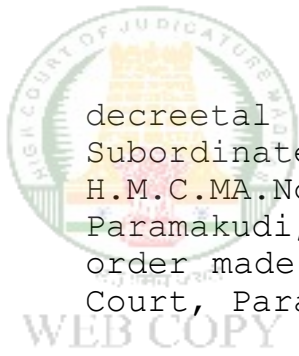
3. The factum of marriage is not in dispute. Admittedly, there is no child for the appellant and the respondent, even though they were living together for some time. Going through the records, it is seen that the dispute arose between the parties some time after the marriage and the wife has narrated several incidents of cruelty. It appears that there was an agreement for mutual divorce originally and the husband has also agreed to settle the matter by mutual dissolution of marriage. It is also evident that the wife had earlier filed a petition for divorce by mutual consent. However, the same was dismissed for non-appearance of husband. Having regard to facts and circumstance of the case and the evidence on record, the learned Subordinate Judge, Paramakudi allowed the petition filed by the wife and dismissed the petition filed by the husband for restitution of conjugal rights. Since the wife was treated with cruelty and the husband had no intention to take the wife to the matrimonial home, the petition for divorce was allowed by the Subordinate Court.

4. Aggrieved by the same, the husband preferred an appeal in H.M.C.M.A.Nos. 7 and 8 of 2017, as against the judgments in H.M.O.P.No.106 of 2013 and 100 of 2015. The appellate Court also considered the fact that earlier, the parties have agreed for mutual divorce and that the earlier petition filed by the wife for divorce was dismissed because of non-appearance of the husband.

5. Since the earlier proceedings in H.M.O.P.No.70 of 2011 filed by the wife was dismissed for default, it is contended that the subsequent petition filed by the wife for divorce is not maintainable. The earlier petition was filed on the ground of desertion and the present petition is filed for desertion and cruelty. It is to be seen that the parties are living separately for about 7 years and a joint petition was filed by both earlier for divorce by mutual consent. The incidents of cruelty alleged by the wife against the husband was accepted by the Courts below. The wife's contention that the appellant used to lock the house with wife inside, when he goes to work was accepted by Courts below as an act of cruelty.

6. Having regard to the facts and circumstances of the case and the evidence let in by the parties, this Court is unable to find any error or perversity or irregularity in the findings of the Courts below. The findings of the Courts below are based on appreciation of evidence. This Court is unable to find any questions of law arise for consideration in these appeals.

7. In the result, these appeals are dismissed and the judgment passed by the learned Additional District Judge, Paramakudi, in H.M.C.M.A.No.7 of 2017, dated 31.01.2019, confirming the fair and



decreetal order made in H.M.O.P.No.100 of 2015 on the file of the Subordinate Court, Paramakudi, dated 09.10.2017 and the judgment in H.M.C.MA.No.8 of 2017 on the file of the Additional District Court, Paramakudi, dated 31.01.2019, confirming the fair and decreetal order made in H.M.O.P.No.106 of 2013 on the file of the Subordinate Court, Paramakudi, dated 09.10.2017, are confirmed. No costs.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

cmr

To

1.The Additional District Judge, Paramakudi.

2.The Subordinate Judge, Paramakudi.

+2 CC to M/s.S.DEENADHAYALAN, Advocate SR-84295 & 84296

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JM/15.10.2019/3P/5C