



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

C.M.A. (MD) No.469 of 2018

Rajasathaiya

... Appellant/Petitioner

-vs-

Vijayasurya

... Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 19 of the Family Court Act, 1984 against the judgment and decree dated 17.04.2018, passed in H.M.O.P. No.36 of 2016 by the Family Court, Sivagangai.

For Appellant : Mr.N.Tamilmani

For Respondent : Mr.D.Balasubramanian

J U D G M E N T

[Judgment of the Court was delivered by T.S.SIVAGNANAM, J.]

This Civil Miscellaneous Appeal filed under Section 19 of the Family Court Act is directed against the judgment and decree dated 17.04.2018, passed in H.M.O.P. No.36 of 2016 on the file of the Family Court, Sivagangai.

2.H.M.O.P.No.36 of 2016 was filed by the appellant/husband under Section 13(1)(i)(i-a) of Hindu Marriage Act for divorce on the ground of adultery and cruelty. The said petition was dismissed by the Family Court holding that there is no evidence of adultery and cruelty. In the said petition, the respondent/wife did not appear. However, the Court came to the conclusion that the appellant/husband has not proved the case i.e., after considering the evidence of P.W.1 - Husband and the documents placed before the Court. Challenging the said judgment and decree, the husband is before this Court with this Civil Miscellaneous Appeal.

3.We have heard Mr.N.Tamil Mani, learned counsel appearing for the appellant and Mr.D.Balasubramanian, learned counsel appearing for the respondent/wife.

4.On a perusal of the impugned judgment, we find that the Family Court is fully justified in coming to the conclusion that the appellant/husband has not proved adultery or cruelty caused to him and there is no ground made out to interfere with the judgment and



decree of the Court below. Therefore, we have no hesitation to confirm the finding of the Family Court.

5.However, we are inclined to set aside the decree and judgment of the Family Court because of subsequent development, which had taken place during the pendency of the proceedings. Interestingly, the respondent/wife was also prayed for divorce in H.M.O.P.No.63 of 2016 before the Sub Court, Ramanathapuram. However, she did not pursue the matter and the petition was dismissed for default on 16.03.2018 and no steps were taken by her to restore the said divorce petition, though the respondent/wife filed petition to set aside the exparte decree in H.M.O.P.No.36 of 2016, which was allowed. However, in the interregnum the respondent/wife remarried while the exparte decree of divorce was in force and out of the wedlock a child born to her. In our considered view, it is sufficient to grant divorce in favour of the appellant/husband. It is made clear that the decree is granted only on the ground that the respondent/wife remarried and she herself has sought for divorce and not on the allegations of adultery and cruelty.

6.In the light of the above, the Civil Miscellaneous Appeal is disposed of by confirming the finding of the Family Court, Sivagangai in H.M.O.P.No.36 of 2016 dated 17.04.2018, but modify the decretal portion by granting decree for divorce. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

sj

To

The Judge,
Family Court,
Sivagangai.

+1 CC to MR.N.TAMILMANI, Advocate (SR-94942[F] dated 30/10/2019)

C.M.A. (MD) No.469 of 2018

25.10.2019

VB(18.12.2019) 2P 3C