



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE T. RAJA

C.M.S.A.No.28 of 2008

B.Magesh Kumar

...Appellant/Petitioner

Vs

R.Bhuvaneshwari

...Respondent/Respondent

Prayer: Civil Miscellaneous Second Appeal filed against the judgment and decree of the CMA.No.14 of 2008 on the file of the District Judge, Uthagamandalam dated 07.03.2008 by reversing the judgment and decree of the HMOP.No.35 of 2006 on the file of the Subordinate Judge, Uthagamandalam, dated 06.10.2007.

For Appellant : Mr.Venkatajalapathy
for M/s.S.Kadarkarai

For Respondent : M/s.Lenin & Bhagya

JUDGMENT

This Civil Miscellaneous Second Appeal has been filed against the judgment and decree of the CMA.No.14 of 2008 on the file of the District Judge, The Nilgiris at Uthagamandalam dated 07.03.2008 by reversing the judgment and decree of the HMOP.No.35 of 2006 on the file of the Subordinate Judge, The Nilgiris at Uthagamandalam, dated 06.10.2007.

2. The case of the appellant in brief is as follows:

The marriage between the appellant and the respondent was solemnized on 23.02.2004 at Nanjanadu Village as per the customs prevailing in Badaga Community as both parties belong to the said community and also as per the Hindu rites. At the time of the marriage, the respondent wife was working at Acusis, Chennai and after the marriage, she got the present job at Coimbatore and the appellant started living with the respondent at Coimbatore. Since the appellant is having properties at Nanjanadu Village, there was a proposal to make the respondent to live with him at Nanjanadu along with his parents. But the said proposal was not accepted by the respondent wife and her parents and they used to visit Coimbatore often and started interfering with their matrimonial life . While so, after the



WEB COPY birth of a female child, due to the difference of opinion between the parties, the respondent-wife refused to go and live with the appellant. Therefore, the appellant issued a notice dated 15.3.2006 calling upon the respondent to come and live with him. Instead of joining the appellant, the respondent has sent a reply alleging that the respondent's mother with an intention to demand dowry, ill-treated her. Hence, the appellant has been constrained to file HMOP.NO.35/2006 before the learned Subordinate Judge, The Nilgiris at Udhagamandalam on the ground of cruelty and the same was allowed by judgment dated 06.10.2007 granting decree for divorce. Aggrieved over the same, the respondent wife has filed CMA.No.14 of 2008 before the learned District Judge, The Nilgiris at Ootacamund and the same was reversed by judgment dated 07.03.2008. Hence the present Civil Miscellaneous Second Appeal by the appellant husband.

3. Today when the matter was called, the learned Counsel for the respondent wife submitted that the respondent wife has given an affidavit giving written consent for divorce and he has also filed the affidavit of the respondent wife dated 15.12.2020 before this Court and recording the same, the Civil Miscellaneous Second Appeal may be disposed of.

4. In this regard, it is relevant to extract the affidavit of Mrs.R.Bhuvaneswari, the respondent herein here under:

'1. I am the respondent herein and the appellant in CMA.No.14 of 2008 and as such I am well acquainted with the facts and circumstances of the above appeal.

2. I respectfully submit that the appellant who is my husband originally filed HMOP.No.35/2006, praying for divorce, by dissolving our marriage which took place on 23.02.2004 and the Hon'ble Sub-Court, Uthagamandalam, The Nilgiris was pleased to allow the petition.

3. I preferred CMA.No.14 of 2008, against the said order and the Hon'ble District Court, Udhagamandalam, The Nilgiris was pleased to reverse the said order, against which the appellant herein had preferred the above appeal.

4. I had been waiting all these years, on the faith that the appellant would change his mind in due course and we can lead a reasonable married life. However, all the genuine efforts taken by my parents, relatives and well wishers, apart from village elders from the villages of mine and the appellant went in vain and I see no reason t hat the appellant would decide to lead a reasonable married life henceforth. I also see no purpose in forcing him to lead any life with me and I have therefore decided to put an end to my faith.



WEB COPY

5. I had also explained the same to my parents and I have informed them that there is no purpose in arguing the above appeal on merits.

6. I am therefore, with the leave of this Hon'ble Court, filing this affidavit that this Hon'ble Court may be pleased to pass appropriate order/s for dissolving our marriage which took place on 23.02.2004 and pass such other order/s this Hon'ble Court deems fit under the circumstances and thus render justice.''

5. In view of the above, without going into the merits of the matter, recording the affidavit filed by the respondent wife, the present Civil Miscellaneous Second Appeal is allowed thereby setting aside the judgment and decree passed in CMA.No.14 of 2008 by the learned District Judge, The Nilgiris at Uthagamandalam dated 07.03.2008 and the judgment and decree passed in HMOP.No.35 of 2006 by the learned Subordinate Judge, The Nilgiris at Uthagamandalam, dated 06.10.2007 is restored. The said affidavit shall form part of the decree. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

tsi

To

1. The Subordinate Judge,
The Nilgiris at Udhagamandalam.
2. The District Judge,
The Nilgiris at Udhagamandalam.

+1cc to M/s.Lenin & Bhagya & A.Sasikumar, Advocate, S.R.No.41522

CMSA.No.28/2008

SAI (CO)
RVM(28/07/2021)