

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2020

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THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.186 of 2011  
and  
M.P.No.2 of 2014

V.Jagannathan ... Appellant/Appellant

Vs.

V.Jayashree ... Respondent/Respondent

Civil Miscellaneous Appeal is filed under Section 28 of the Hindu Marriage Act, against the fair and final order passed in H.M.O.P.No.196 of 2006 dated 02.06.2010 on the file of Additional District Judge (Fast Track Court - I) at Poonamalle.

For Appellant : M/s.V.Uma Shankar

For Respondent : No Appearance

Judgment

This Civil Miscellaneous Appeal has been filed against the fair and final order dated 02.06.2010 passed in H.M.O.P.No.196 of 2006 on the file of the Additional District Judge (Fast Track Court - I) at Poonamalle.

2. The case of the appellant is that the marriage between the appellant and the respondent was solemnized on 11.11.2002 at No.5, Sulakshna Kalyana Maaligai, Pillaiyar Koil Street, Pammal, Chennai - 600 075 as per Hindu Rites and Customs. After the marriage, they were blessed with a female child on 17.08.2004. The respondent was working as a Teacher in S.S.M. Higher Secondary School, Kalathur, Chennai and was drawing a salary of Rs.3,000/- per month. From the date of marriage, she used to suspect the appellant and often used to quarrel with the appellant, and due to which, there was a misunderstanding

between them. On 22.04.2006, the respondent as usual started to tease the appellant and slowly twisted it as a quarrel and gone to the extent of beating, biting and pinching the appellant, and finally, left the matrimonial home along with her child committing cruelty to the appellant. After she went, many panchayats were held to rejoin them, but all went in vain. Hence, the appellant has filed a petition for divorce in H.M.O.P.No.196 of 2006 before the Additional District Judge (Fast Track Court-I), Poonamalle.

3. Denying the allegations, the respondent/wife filed a counter affidavit before the Court below stating that it is the appellant who behaved indecently from the date of marriage and she has not committed any cruelty to the appellant. Further, it has been stated that the appellant had not taken care of the respondent and her child properly, and when the respondent questioned the same, the appellant picked up quarrel with her and made them to starve. Moreover, it has been stated that the respondent has not left the matrimonial home deserting the appellant and it is the appellant who forcibly took the respondent to her parents' house and left her stating that he will comeback and take her in the month of August, but thereafter he has not come. Furthermore, it has been stated that the respondent is always ready to join with the appellant and only the appellant is avoiding her.

4. The Additional District Judge (Fast Track Court - I), Poonamalle, after considering the pleadings, oral and documentary evidence, dismissed the petition filed by the appellant, and therefore, he has filed this appeal before this Court.

5. Heard the learned counsel for the appellant and perused the materials available on record.

6. It is seen from the records that the marriage between the appellant and the respondent was held on 11.11.2002, and after the marriage, they lived together only for three years and few months, and thereafter, they got separated and the appellant has filed a petition for divorce in H.M.O.P.No.196 of 2006. They have also one female child who is now under the custody of the respondent.

7. The appellant has stated in his petition that from the date of marriage, the respondent never done any housekeeping work, she always suspected him and quarreled with him, she never allowed his parents and relatives to come to their house, and if he asked about anything, the respondent used to shout and dash

her head on the wall threatening that she is going to die. But, on perusal of the records, it is seen that the appellant has not examined any single witness before the Court below to prove the said act of the respondent. Further, the appellant has stated that on 22.04.2006, the respondent as usual started to quarrel with him and left the house along with the child. But, during his examination, he himself has admitted that the respondent had not left the home and only he had left her in her parents' home stating that he will comeback and take her after the problems have been solved. Moreover, the appellant has stated that after the respondent had left the house, many panchayats were made but all went in vain, and therefore, he filed a divorce petition. But none of the panchayatars were examined before the Court below to prove his case.

8. The appellant has also stated in his deposition that after the respondent had given birth to a female child, he tried in many ways to live with the respondent, but the respondent was not willing to live with him, and further, she and her father had demanded money from him and harassed him physically and mentally. But, none of the witnesses were examined by the appellant before the Court below to prove the said allegations. The respondent/wife has also stated that she was willing to live with the appellant and only the appellant had avoided her, but none of the records would show that steps have been taken to live with the appellant. So, in the absence of any clinching evidence produced by the appellant to prove the allegations against the respondent, the Court below has rightly dismissed his divorce petition and this Court is not inclined to interfere with the same.

9. Accordingly, in the above stated facts and circumstances, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

सत्यमेव जयते -s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

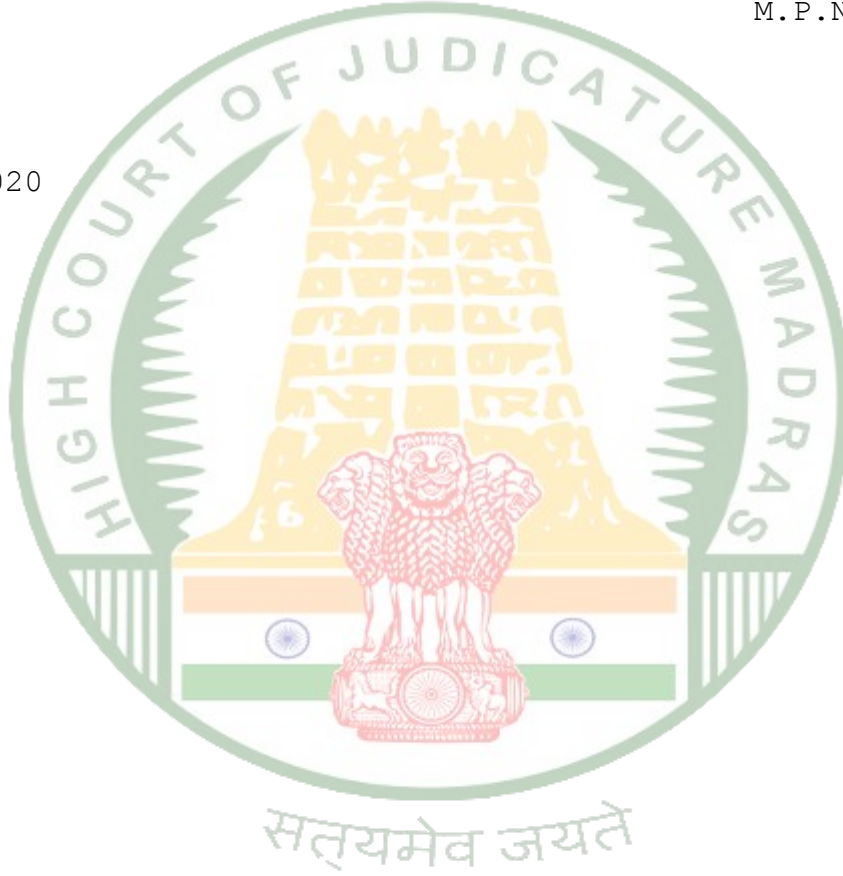
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To

1. The Learned Additional District Judge (Fast Track Court - I),  
Poonamalle.
2. The Section Officer, VR Section, High Court, Madras.

C.M.A.No.186 of 2011  
and  
M.P.No.2 of 2014

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