

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2020

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.2774 of 2016

K.Rajendran ... Appellant/Petitioner

Vs.

Eshwari ... Respondent/Respondent

PRAYER : Appeal filed under Section 19 of the Family Courts Act, 1984 against the judgment and decree dated 29.03.2016 in H.M.O.P.No.656 of 2011 on the file of Principal Family Court, Coimbatore.

For Appellant : Mr.A.Deivasigamani

For Respondent : No appearance

JUDGMENT

(Delivered by M.M.SUNDRESH.,J)

This appeal is preferred by the appellant aggrieved over the dismissal of the divorce petition filed on the ground of cruelty.

2. Heard the learned counsel appearing for the appellant. Despite service of notice and the name of the respondent having been printed in the cause list, none appeared for the respondent.

3. The appellant and the respondent got married on 02.08.1995. According to the appellant, the respondent used to ill-treat him. She gave false complaints against him before the police station. He was harassed by the police in view of the

said complaint given. She filed a petition under the Domestic Violence Act making false allegations that the appellant was one of loose morals apart from being a drunkard. Thus, on this ground, the divorce has been sought for.

4. The respondent filed counter affidavit stating that it is the appellant who was harassing her. He used to physically assault her in a drunken mood. She specifically denied all the allegations made.

5. The Family Court, taking into consideration the petition filed for divorce and the matrimonial case seeking maintenance passed a common order. Accordingly, the divorce petition was dismissed, inter alia, holding that the allegations are not true as against the case projected by the respondent. Incidentally, M.C.No.10 of 2012 filed by her was allowed. Challenging the dismissal of the petition filed in H.M.O.P.No. 656 of 2011, the present appeal has been filed.

6. The learned counsel appearing for the appellant submitted that the respondent was already married at the time of marriage. She gave false complaints pursuant to which he was taken to the police station and assaulted. Even in the matrimonial case, she made false allegations against the appellant. The Family Court has not considered these aspects in the correct perspective. It is she, who did not want to live with the appellant earlier. That is the reason why she did not file any petition for restitution of conjugal rights. Thus, the appeal will have to be allowed.

7. We do not find any merit in this appeal. The Family Court, passed a detailed and extensive order considering all the materials. Accordingly, it was held that the appellant has not proved his case. The appellant being the petitioner and the divorce has been sought for on the ground of cruelty, it is incumbent upon him to prove and substantiate the allegations made amounting to cruelty. The Family Court rightly observed that the appellant has not proved the allegations.

8. Merely filing a petition making certain allegations while seeking maintenance cannot be termed so as to constitute an element of cruelty. The appellant has not adduced any other evidence except these statements. On the contrary, the respondent has examined both the children born out of the wedlock as R.W.2 and R.W.3. They have also spoken in tune with the case projected by the respondent.

9. In such view of the matter, we do not find any error in the order passed by the Family Court warranting interference.

10. The Civil Miscellaneous Appeal stands dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ssm

To

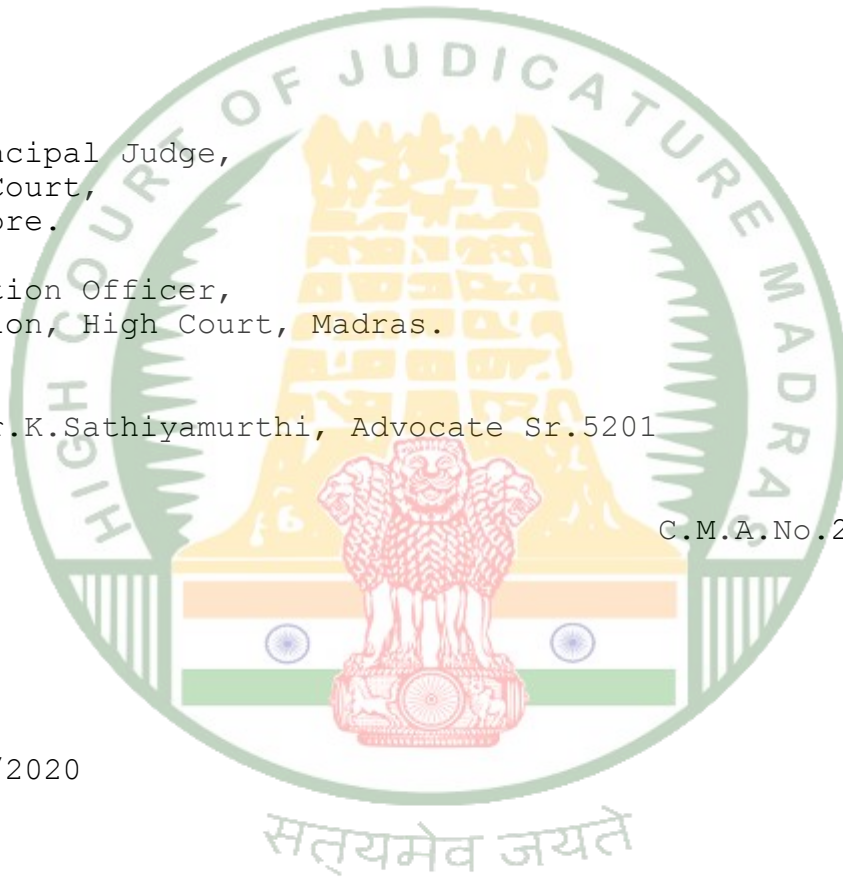
1.The Principal Judge,
Family Court,
Coimbatore.

2.The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.K.Sathiyamurthi, Advocate Sr.5201

C.M.A.No.2774 of 2016

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srg 07/12/2020



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