

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.S.A.No.25 of 2020

Radha

.. Appellant/Respondent

Versus

Rajendran

.. Respondent/Petitioner

Prayer: Civil Miscellaneous Second Appeal has been filed under Section 100 of Civil Procedure Code read with Section 28 of the Hindu Marriage Act, 1955, against the judgment and decree dated 13.03.2020 in C.M.A.No.2 of 2017 on the file of learned Principal District Judge, Ariyalur, confirming the judgment and decree dated 02.11.2017 in H.M.O.P.No.85 of 2010 on the file of learned Subordinate Judge, Ariyalur.

For Appellant : Mr.S.Vijayaganesh

O R D E R

Heard Mr.S.Vijayaganesh, learned counsel for the appellant/wife, through Video Conferencing due to COVID-19 pandemic.

2. The appellant/wife has filed this appeal challenging the concurrent findings of the Courts below grating divorce.

3. Learned counsel appearing for the appellant/wife submitted that at the time of marriage on 22.06.2008, husband was aged about 45 years and the wife was aged about 39 years. In the matrimonial home, husband's sister, who is a widow, has been living with them along with her children. Whiles, her sister-in-law alleged that appellant/wife is not cooperating with her children, as a result, problem has started arisen, due to which, criminal complaint was also filed against the appellant/wife by her sister-in-law and the learned Judicial Magistrate Court, vide C.C.No.323 of 2012, dated 14.09.2013, finding the wife guilty, fined her of Rs.5,000/-. Alleging further that there was a frequent quarrel taking place between the appellant/wife and the respondent/husband, the respondent/husband filed a divorce petition in H.M.O.P.No.85 of 2012 under Section 13 of the Hindu Marriage Act. Learned trial

Court, accepting the case of husband that wife was responsible for causing cruelty and that has resultantly disturbed the peace in the respondent's family, came to the conclusion that they cannot live together and granted divorce, and as against which, the wife filed an appeal before the learned Principal District Court, Ariyalur, on various grounds.

4. Adding further, he argued that when the learned trial Court has not properly applied law under Section 13 of the Hindu Marriage Act in its true spirit, ground of cruelty cannot be espoused, but, the learned first appellate disagreeing with the said contention, confirmed the decree of divorce granted by the learned trial Court. It is further argued that even after the divorce was granted, the appellant/wife is still residing there in one of the matrimonial homes belonging to her husband, that shows the findings of the Courts below are wrong, because, attitude of the appellant/wife to stay with her husband to bring submissive relationship has been completely overlooked.

5. But, this Court is unable to find any merit on the above said submissions, the reason being that the Courts below have given a finding that after six months of marriage, both husband and wife are not living happily and the appellant/wife was not interested the staying of her sister-in-law along with her children in the matrimonial home. Learned Courts below further observed that the respondent/husband was taking care of his widowed sister along with her children as a dutiful brother, but, this was not accepted by the appellant/wife. While they were staying together, appellant/wife attacked one Nithya, who is a daughter of her sister-in-law, and she sustained injuries and for which, charge sheet was filed against the appellant/wife and the learned Judicial Magistrate Court, Jeyagondam, in C.C.No.323 of 2012, dated 14.09.2013, fined her Rs.5000/- to be payable to Nithya. Receipt of payment was marked as Ex.P2. Therefore, the wife, having suffered conviction followed by payment of Rs.5000/-, may not be in a position to forget this incident, since the wife was fined due to the complaint given by her sister-in-law. Therefore, by taking note of all these aspects, learned Courts below have rightly come to the conclusion that they cannot lead a peaceful matrimonial life. Moreover, in addition to picking up quarrel, she has also made her mother-in-law to stay in a cattle shed and during cross-examination, P.W.2 to P.W.4 supported the same.

6. Therefore, aforesaid various incidents brought out through oral and documentary evidences would show that the relationship between the husband and wife was irretrievably broken as they lived together as husband and wife only for six months. Thus, attacking of her sister-in-law's daughter, for which, she was charge sheeted and fined by learned Judicial

Magistrate Court, Jeyagondam, in C.C.No.323 of 2012, dated 14.09.2013, and keeping her mother-in-law in a cattle shed would how that husband was put to serious traumatic experience and this can be safely termed as cruelty coming within the purview of Section 13(1)(ia) of the Hindu Marriage Act and on this score, I am of the considered view that the respondent/husband is entitled for the decree of divorce under Section 13(1)(ia) of the Hindu Marriage Act.

7. In fine, for the reasons stated above, this Court, finding no question of law much less substantial question of law arises in this appeal, is inclined to dismiss the same and accordingly, this Civil Miscellaneous Second Appeal is dismissed. Consequently, judgments and decrees passed by the learned Courts below are hereby confirmed. No Costs.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

To

1.The Subordinate Judge, Ariyalur.

2.The Principal District Judge, Ariyalur.

C.M.S.A.No.25 of 2020

SR(CO)
SP(03/11/2020)

सत्यमेव जयते

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