

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.10.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.S.A. No.21 of 2014

L.Rajini

... Appellant/Respondent

-vs-

N.Kannan

... Respondent/Petitioner

Prayer: Civil Miscellaneous Second Appeal filed under Section 28 of the Hindu Marriages Act read with Section 100 of the Code of Civil Procedure against the order and decree dated 03.01.2013 made in C.M.A. No.62 of 2011 on the file of the District Court (Appellate Court) Nilgiris, reversing the judgment and decree dated 10.06.2011 made in H.M.O.P. No.41 of 2010 on the file of the Sub Court, Nilgiris.

For Appellant : Mr.V.G.Suresh Kumar

For Respondent : Mr.Sanjeevkumar for
M/s.Royan Law Associates

JUDGMENT

The Civil Miscellaneous Second Appeal has been directed against the impugned judgment and decree dated 03.01.2013 made in C.M.A. No.62 of 2011 on the file of the District Court, Nilgiris, reversing the judgment and decree dated 10.06.2011 made in H.M.O.P. No.41 of 2010 on the file of the Sub Court, Nilgiris.

2.Substantial questions of law have been framed by the appellant as under:

'a)Whether the Lower Appellate Court was right in granting a decree for divorce against the appellant only on the ground that there had been non-compliance with the decree for restitution of conjugal rights made in H.M.O.P. No.53 of 2008 on 09.01.2009 ?

b)Whether the order and decree of the Lower Appellate Court granting divorce only on consideration of a

portion of the evidence of the appellant in cross examination, without considering the entirety of the evidence and the reasons and implication and also the justification for the appellant being unable to comply with the decree for restitution of conjugal rights?

c)Whether a petition for divorce on the ground of desertion can be allowed only on the ground that there had been an earlier decree for restitution of conjugal rights which had been complied with without considering the reasons and the justification for such non-compliance with the decree for restitution of conjugal rights?'

3.Learned counsel appearing for the appellant wife would submit that after the marriage solemnised on 23.06.1999 at Hotel Charing Cross, Uthagamandalam between the appellant and the respondent in accordance with the Hindu rites and customs, they lived only for 11 days. Thereafter, the respondent left for Riyadh, Saudi Arabia in July 1999 and he returned in the year 2000. During the wedlock, the appellant became pregnant and given birth to a female child namely, Pooja on 29.08.2001. Learned counsel for the appellant would further submit that despite the respondent undertook to take the appellant to Riyadh, he has not come forward to see his daughter till December 2003. Since the appellant has undergone surgery, she has met out the medical expenses incurred. As the respondent again left and did not return over a period of time, the appellant was constrained to sell away the house site purchased in her name so as to meet out the huge expenditure for maintaining herself and her child. Thereafter, the appellant left the matrimonial home. In order to harass the appellant, the respondent has filed H.M.O.P. No.53 of 2008 before the Subordinate Court, Nilgiris seeking restitution of conjugal rights. Since the appellant was eager to join with the respondent, she had not contested the said proceedings effectively with an intention to go back to live with her husband. Although the above petition for restitution of conjugal rights was allowed and the appellant expressed her willingness to join with the respondent for the welfare of the child, the respondent has not chosen to cohabit with the appellant and filed H.M.O.P. No.41 of 2010 seeking dissolution of marriage before the Subordinate Court, Nilgiris. After considering the fact that the appellant was ready for re-union and she has been maintaining the child alone in meeting out the expenses, the Trial Court dismissed the divorce petition filed by the respondent and as against which, the respondent filed C.M.A. No.62 of 2011 before the District Court, Nilgiris. But the Appellate Court has come to the conclusion that the appellant was responsible for desertion on which basis the decree for

divorce was granted, which is not justifiable. The reason being that when the respondent, as a husband and also a dutiful father has not even come forward to meet out the expenses of his wife and the small child, the grant of divorce on the ground that the appellant has deserted the respondent is wholly unsustainable in law.

4.Opposing the above prayer, learned counsel appearing for the respondent husband, exposing the wrong stand taken by the appellant, pleaded that when the respondent has issued a notice requesting for re-union, on receipt of the same, the appellant gave her reply rejecting the proposal for re-union, which ultimately compelled the respondent husband to file the above H.M.O.P. No.53 of 2008 before the Subordinate Court, Nilgiris seeking restitution of conjugal rights under Section 9 of the Hindu Marriages Act and the same was allowed on 09.01.2009. As the appellant did not take any care or step to come and restore the matrimonial ties, the respondent has filed the above H.M.O.P. No.41 of 2010 seeking dissolution of marriage. Therefore, the Appellate Court, disagreeing with the finding and the conclusion given by the Trial Court, granted divorce dissolving the marriage, which cannot be found fault with. Secondly, both the husband and wife are living separately for the past 16 long years. Therefore, there is no justification on the part of the appellant to ask for re-union. When the offer repeatedly given by the respondent was rejected by the appellant, asking for restitution of conjugal rights is highly improper on the part of the appellant.

5.Learned counsel appearing for the appellant submitted that today he has received instructions from his client to the effect that since she is not ready for re-union, she does not wish to prosecute the appeal.

6.In view of the submission made by both sides that both the appellant and the respondent are not willing for re-union, the appeal stands dismissed answering the substantial questions of law against the appellant. No costs.

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Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vga

To

1.The District Court,
Nilgiris.

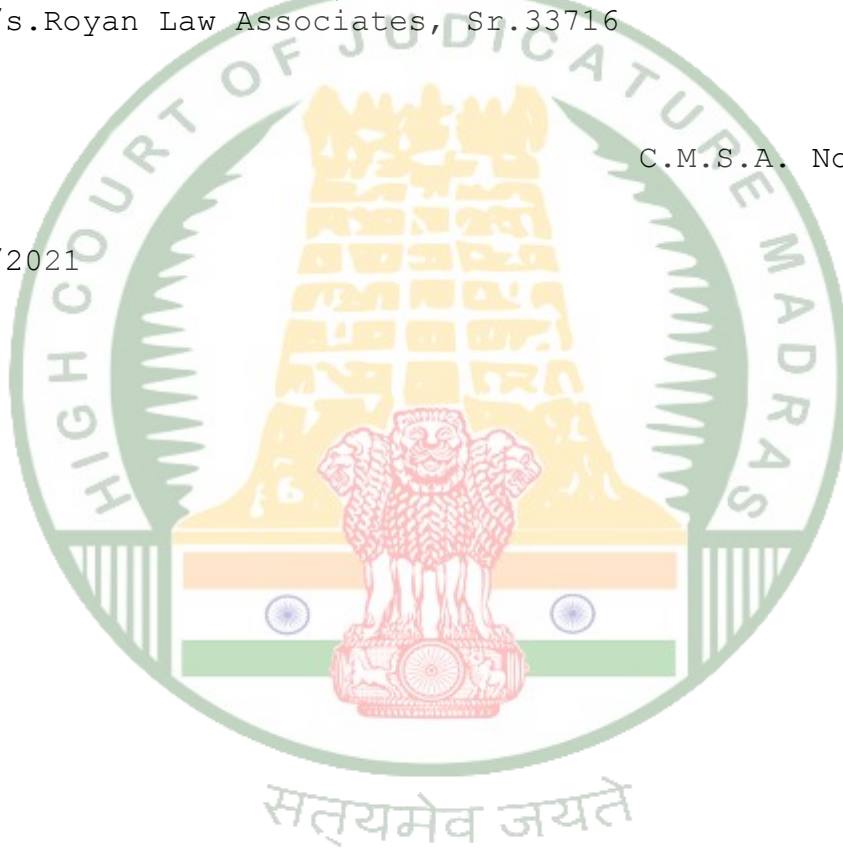
2.The Sub Court,
Nilgiris.

+lcc to Mr.V.G.Suresh Kumar, Advocate Sr.33764

+lcc to M/s.Royan Law Associates, Sr.33716

C.M.S.A. No.21 of 2014

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