

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

CMSA Nos.29 and 30 of 2020

Sumathi ..Appellant/Wife in both CMSAs.

Vs.

Kannan ..Respondent/Husband in both CMSAs.

Civil Miscellaneous Second Appeal No.29/2020 filed against the judgment and decree passed in CMA.No.8/2018 dated 13.08.2020 on the file of the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam.

Civil Miscellaneous Second Appeal No.30/2020 filed against the judgment and decree passed in CMA.No.07/2018 dated 13.08.2020 on the file of the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam reversing the judgment and decree passed in HMOP.No.10 of 2014 dated 17.07.2018 on the file of the Subordinate Judge, Gobichettipalayam.

For Appellant : Ms.R.Shase

For Respondent : ...

C O M M O N J U D G M E N T

The Civil Miscellaneous Second Appeal No.29/2020 has been filed against the judgment and decree passed in CMA.Nos.8/2018 dated 13.08.2020 by the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam whereas the Civil Miscellaneous Second Appeal No.30/2020 has been filed against the judgment and decree passed in CMA.No.07/2018 dated 13.08.2020 by the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam, reversing the judgment and decree passed in HMOP.No.10 of 2014 dated 17.07.2018 on the file of the Subordinate Judge, Gobichettipalayam.

2. The brief facts of the cases are as follows:

The appellant herein and the respondent herein were in love affairs for two years and they got married on 02.09.2009 as per the Hindu Rites and Customs at Arulmighu Subramaniasamy Temple, Pachamalai at Gobichettipalayam. Thereafter, there was a

Reception held on 30.09.2009 in Maragatham Ramasamy Marriage Hall at Kallipatti. While so, due to difference of opinion between the parties, the respondent-husband has filed HMOP.No.68/2012 before the learned Subordinate Court, Gobichettipalayam under Section 13(1)(ia)(i)(i-b) of the Hindu Marriage Act, 1955 seeking dissolution of the marriage. While so, the appellant herein-wife has filed HMOP.No.10/2014 under Section 9 of the Hindu Marriage Act, seeking restitution of conjugal rights. By a common judgment dated 17.07.2018, the learned trial court has dismissed the HMOP.No.68/2012 and allowed the HMOP.No.10/2014 filed by the appellant wife seeking restitution of the conjugal rights. Aggrieved over the same, CMA.Nos.7 and 8 of 2018 have been filed by the respondent husband before the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam. By a Common Judgment dated 13.08.2020, the I Appellate Court allowed both the appeals, thereby reversing the judgment and decree of the trial court. Aggrieved over the same, the present Civil Miscellaneous Second Appeals have been filed by the appellant herein-wife.

3. The matter is listed today under the caption, 'for admission'.

4. Learned Counsel for the appellant has raised the following substantial questions of law in the grounds of appeals:

a. Whether the appellate Court followed the mandatory procedure postulated under Section 96 and Order 41 Rule 31 of CPC while reversing the well considered judgment of the trial court;

b. Whether the courts below are right in granting divorce on the ground of cruelty when the previous act was condoned by the respondent husband as per Section 23(1)(b) of the Hindu Marriage Act, 1955?;

c. Whether the courts below are right in granting divorce when the same is not proved beyond pleadings and evidence? ; and

d. Whether the accusations made by the respondent/husband in the divorce application constitute mental cruelty for sustaining the claim of divorce?

5. Heard the learned Counsel for the appellant and I have also perused the typed set of papers carefully.

6. A perusal of the Common judgment of the Lower Appellate Court in CMA.Nos. 7 and 8 of 2018 reveals that while dealing with the said appeals, the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam has rightly considered the mandatory provisions provided under Order 41 Rule 31 of CPC in paragraphs 9 and 10 of his Common

Judgment and accordingly, rendered his findings and conclusions by reversing the common judgment of the trial court. As such, the first substantial question of law raised herein is one being a question of fact that has been rightly considered by the lower Appellate Court, the same cannot be accepted as a substantial question of law. Likewise, the second substantial question of law i.e. Whether the courts below are right in granting divorce on the ground of cruelty when the previous act was condoned by the respondent husband as per Section 23(1)(b) of the Hindu Marriage Act, 1955?, is also being a question of fact, the same has been rightly considered by the lower Appellate Court, hence, the same also cannot be accepted as a substantial question of law. The common judgment of the lower Appellate court further reveals that it has considered the aspect of creating mental cruelty for sustaining the claim of divorce. Therefore, prima facie, I do not find any question of law much less a substantial question of law warranting admission of the Civil Miscellaneous Appeals.

7. In the result, both the Civil Miscellaneous Appeals fail and they are accordingly dismissed. No costs.

Sd/-

Assistant Registrar (CS.VIII)

/True Copy/

Sub Assistant Registrar

To

1. The III Additional District and Sessions Judge,
Erode at Gobichettipalayam.

2. The Subordinate Judge,
Gobichettipalayam.

+2cc to Mr.M.Guruprasad, Advocate SR.NOs.37910 and 37911

AKM/04.03.21/ 3P-5C/

सत्यमेव जयते

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