

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2020

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.S.A.No.27 of 2019

Subramani
S/o Rathinam

..Appellant/Petitioner

-vs-

Amutha
D/o Chinnadurai

..Respondent/Respondent

Memorandum of Grounds of Civil Miscellaneous Second Appeal filed under Section 28 of the Hindu Marriage Act, 1955 read with Section 100 of the Civil Procedure Code, against the order and decretal order dated 28.6.2019 passed in C.M.A.No.7 of 2015 on the file of the learned Principal District Judge, Perambalur, confirming the order and decretal order dated 30.4.2014 passed in H.M.O.P.No.88 of 2011 on the file of the learned Subordinate Judge, Perambalur.

For Appellant :: Mr.S.Kamadevan

For Respondent :: Mr.P.Valliappan

JUDGMENT

Heard learned counsel for the parties through video conferencing due to the Covid-19 pandemic.

2. The appellant, having lost his prayer for dissolution of marriage with the respondent on the ground of cruelty and desertion under Section 13(1)(i-a)(i-b) of the Hindu Marriage Act, both before the lower appellate Court in C.M.A.No.7 of 2015 and the trial Court in H.M.O.P.No.88 of 2011, has filed this civil miscellaneous second appeal raising the following substantial questions of law:-

- (1) When there is no specific denial by the respondent about the cruelty stated in the petition, whether the Courts below have committed error in not taking that the said cruelty are admitted by the respondent as contemplated under Order 8, Rule 5 of C.P.C?

(2) Whether the Courts below are justified to continue the marriage i.e., when both the parties are living separately from 1990 onwards and could be not be treated as irretrievable breakdown of marriage applying the several judgments rendered by the Apex Court of India and followed by the various High Courts?

3. The case of the appellant in the H.M.O.P.No.88 of 2011 before the trial Court was that the parties, after their marriage on 4.9.89, lived for a period of three months only and thereafter, it was alleged that the respondent deserted the appellant from 10.1.90. It was also further alleged that the respondent abused the appellant/husband in filthy language and refused to live with him, on the ground that he had broken his right hand in an accident. Even after the child's birth, the respondent refused to join and there were police complaints regarding this. It was also pleaded that the respondent/wife was an illicit arrack seller and was also arrested by the police. Making such wild allegation for cruelty and desertion, the appellant has filed the petition for divorce.

4. The respondent, on the other hand, raised a counter allegation that the appellant/husband only treated her with cruelty and chased her away from the matrimonial home when she was three months pregnant. When the respondent was forced to abort the child in the womb, the respondent started living with her parents. But the appellant did not come to see even the new born. Though the parties agreed for a reunion after a long time at the instance of the sister of the appellant, the reunion also did not fructify, because the appellant treated the respondent/wife with cruelty and poured pesticides in the ears of the wife and child and they were saved after a prolonged treatment.

5. With these allegations and counter allegations, the trial Court, on examination of the appellant as P.W.1 and going through the Exhibits P1 to P5 documents and on examination of the respondent/wife as the only witness and after going through the Exhibits R1 & R2 marked on her side, after elaborately analysing the entire evidence, dismissed the petition for divorce.

6. Aggrieved thereby, the appellant/husband filed C.M.A.No.7 of 2015 before the lower appellate Court on the premise that the marriage between the appellant and the respondent have irretrievably broken down, therefore, there was no point in keeping the marriage bond live. It was also further argued before the lower appellate Court on behalf of the appellant that as the respondent/wife had not taken any step to seek for

restitution of conjugal rights, the respondent herself was responsible for the desertion. Finally, the lower appellate Court, taking note of the fact that the husband had categorically admitted the second marriage with one Palaniammal and a son by name Suresh was also born and that the appellant/husband had suppressed the factum of his second marriage during the subsistence of the first marriage in the petition before the trial Court, finding no merits whatsoever available to the appellant/husband, dismissed the appeal, as against which the present civil miscellaneous second appeal has been filed raising the aforementioned substantial questions of law.

7. Mr.S.Kamadevan, learned counsel appearing for the appellant argued that when there is no specific denial by the respondent about the cruelty stated in the petition, whether the Courts below have not committed an error in not taking that the said cruelty was admitted by the respondent, as contemplated under Order 8, Rule 5 of the Civil Procedure Code?

8. The said question can be simply answered from the own admission of the appellant/husband that during the subsistence of the first marriage, he had contracted the second marriage with one Palaniammal and consequently, there was a male child by name Suresh born in the year 1992 through her. When the appellant had already married the respondent and also begot a child by name Balamurugan, contracting the second marriage during the subsistence of the first marriage, itself would clearly amount to a mental cruelty. Therefore, when the appellant, committing the mental cruelty, has kept away the legally wedded wife for a long time, it is not open to the appellant to say that there was no specific denial by the respondent/wife about the cruelty in the petition. Hence, both the Courts below have rightly come to the conclusion that the appellant marrying another person during the subsistence of the first marriage, cannot be given licence by a Court of law to justify his act, because such acts may encourage others to marry during the subsistence of the marriage, which would result in chaos. Moreover, the plea of irretrievable break down of marriage cannot be also accepted, as the Hon'ble Apex Court has held that only in order to do complete justice to parties, in fit cases, may grant divorce, taking note of the fact that the marriage had irretrievably broken down.

When it is not so in this case, agreeing with the findings recorded by both the Courts below, the civil miscellaneous second appeal stands dismissed. No costs.

Sd/-
Assistant Registrar (CCC)

/true copy/
Sub Asst. Registrar

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To

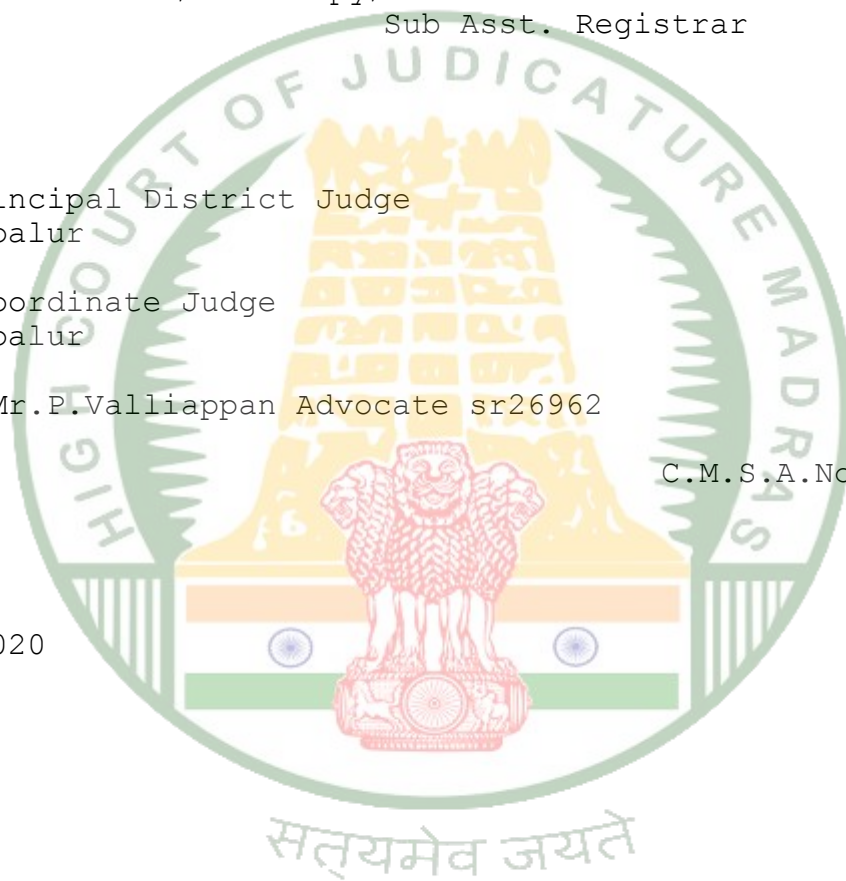
1. The Principal District Judge
Perambalur

2. The Subordinate Judge
Perambalur

+1 cc to Mr.P.Valliappan Advocate sr26962

C.M.S.A.No.27 of 2019

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