

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.2286 of 2018

R.Santhanam		... Appellant
	Vs.	
B.Gomathi		... Respondent

PRAYER : Appeal filed under Section 19 of the Family Courts Act, 1984 against the decree and judgment dated 21.03.2018 passed by the Principal Family Court Judge, Chennai in H.M.O.P.No.3455 of 2015.

For Appellant : Mr.B.K.Girish Neelakantan

For Respondent : Mr.N.Raja

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

This appeal is preferred by the appellant aggrieved over the judgment and decree rendered in O.P.No.3455 of 2015 by which the petition seeking divorce on the ground of desertion was dismissed on the premise that it is hit by Order II Rule 2 read with Section 11 of the Code of Civil Procedure.

2. As rightly submitted by the learned counsel appearing for the appellant, the earlier petition filed in O.P.No.40 of 2009 was on the ground of cruelty. Now, the present petition has been filed on the ground of desertion. There is a marked difference between a claim for divorce on the ground of cruelty and desertion. The provisions of Civil Procedure Code, especially Order II Rule 2 CPC, cannot be applied in vacuum. Similarly, Section 11 of the CPC speaks about the res judicata while dealing with the very same issue involved.

3. Order II Rule 2 of the CPC may not have a strict application to a matrimonial dispute, especially when the cause of action is different. The cause of action is nothing but a

bundle of facts. If the facts are answered in favour of the plaintiff, then he is entitled for the relief. Secondly, there should be a specific pleading and proof. These factors were also not considered by the Family Court in the case on hand.

4. In the case on hand, it is the case of the appellant that the respondent continued to live separately. The marriage was conducted in the year 2007 and the petition for divorce on the ground of cruelty was filed in the year 2009, which was dismissed on 11.02.2011.

5. The present petition has been filed in the year 2015 on a different ground. Therefore, the question for consideration in this petition is as to whether there is actual desertion on the part of the respondent or not. However, the Family Court has given an incidental finding, in our considered view, primarily being carried away by the earlier order passed.

6. In such view of the matter, we are of the view that the judgment and decree rendered by the Family Court cannot be sustained in the eye of law. Accordingly, the same stands set aside and the matter stands remitted to the Family Court for fresh consideration leaving all the issues open to be decided by the Family Court.

7. The Civil Miscellaneous Appeal stands allowed. Taking into consideration the fact that the O.P.No. 3455 of 2015 is pending for more than four years, we direct the Family Court to dispose of the same within a period of four months from the date of receipt of a copy of this judgment. No costs.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

ssm
To

The Principal Judge,
Family Court,
Chennai.

+1 CC to Mr.B.K.Girish Neelakantan, Advocate sr 5251.
+1 CC to Mr.N.Raja, Advocate sr 5068.

C.M.A.No.2286 of 2018

MR(CO)
SP(26/02/2020)