



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02-02-2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

CMSA No.38 of 2001

S.Muthiayyan

..Appellant/Respondent

vs.

Sundara Rajeswari

..Respondent/Petitioner

PRAYER : Civil Miscellaneous Second Appeal is preferred under Section 28 of Hindu Marriage Act read with Section 100 of the Code of Civil Procedure against the judgment and decree dated 24.01.2000 made in CMA No.250 of 1999 on the file of the learned Principal District Judge, Nagapattinam, confirming the order and decree dated 22.06.1999 made in HMOP No.46 of 1997 on the file of the learned Principal Subordinate Judge, Nagapattinam.

For Appellant : Mr.K.R.Rameshkumar

For Respondent : Mr.V.Raghavachari

J U D G M E N T

The unsuccessful husband in a petition for dissolution of marriage has preferred the present Civil Miscellaneous Second Appeal.

2. The appellant filed HMOP for divorce, which was dismissed by the Trial Court, so also by the first Appellate Court.

3. It is brought to the notice of this Court that both the appellant and the respondent are not living together and they are living separately for many number of years.

4. In view of the fact that there is no scope for reunion and resumption of matrimonial home, no further adjudication needs to be entertained. Even otherwise, it is stated that the appellant is aged about more than 60 years and both the Courts have declined to grant dissolution of marriage.

5. Beyond the fact that the spouses are living separately for long years, the substantial question of law raised in the present Civil Miscellaneous Second Appeal relates to the facts, which cannot be construed as a substantial question of law, so as to adjudicate the present Civil



Miscellaneous Second Appeal on hand and on both these grounds, the Civil Miscellaneous Second Appeal deserves to be rejected.

6. Learned counsel appearing on behalf of the appellant made a submission that long separation is also a ground for dissolution of marriage. However, those factual aspects cannot be adjudicated in the present Civil Miscellaneous Second Appeal, as the substantial questions of law raised are relatable to the factual matrix of the case.

7. Thus, this Court is not inclined to consider those factual aspects and the spouses are living separately may be a good ground and the same cannot be considered at this length of time for the purpose of grant of dissolution of marriage, as the divorce petition filed by the husband was dismissed by the Trial Court as well as by the first Appellate Court. Thus, CMSA No.38 of 2001 stands dismissed. However, there shall be no order as to costs.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

Svn

To

1.The Principal District Judge,
Nagapattinam.

2.The Principal Sub Judge,
Nagapattinam.

+1 CC to Mr.V.Raghavachari, Advocate sr 5726.

+1 CC to Mr.K.R.Rameshkumar, Advocate sr 6070.

C.M.S.A.No.38 of 2001

VD(CO)
SP(09/09/2021)