



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2021
CORAM

WEB COPY

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.S.A.No.05 of 2007 and
M.P.Nos.1 & 2 of 2007

M.Gokila

..Appellant/Appellant/Petitioner

Vs.

1.Ramakrishnan

..1st Respondent/Respondent/Respondent

2.The Director,
Government Multispeciality Hospital,
Chennai.

..2nd Respondent

R2 suo moto impleaded as party respondent vide
Court order dated 02.11.2018 made in
C.M.S.A.No.5 of 2007.

Prayer : Civil Miscellaneous Second Appeal filed under Section 28 of the Hindu Marriage Act r/w Section 100 of C.P.C., against the decree and judgment in H.M.O.P. No.4 of 2005 dated 07.07.2005, on the file of the Sub Court, Mettur as confirmed in C.M.A.No.24 of 2005, dated 23.11.2006, on the file of the Fast Track I (Salem) (Additional District Judge), Salem.

For Appellant : Mr.R.Subramanian

For Respondents : Ms.Revathy for
Mr.R.Nalliyappan for R1
: Batta due for R2

J U D G M E N T

The judgment and decree in H.M.O.P.No.4 of 2005 dated 07.07.2005, as confirmed in C.M.A.No.24 of 2005, dated 23.11.2006, is under challenge in the present civil miscellaneous second appeal.

2. The substantial questions of law raised in the second appeal on hand is whether the Courts below failed to see that the respondent has not made out any grounds for desertion or cruelty and whether the Courts below misconstrued the law regarding irretrievable break down in matrimonial matters which has resulted in perverse findings.



3. The substantial questions of law raised are related to the facts and deserves no consideration. It is an admitted fact that the marriage between the appellant and the first respondent was solemnized. However, on account of certain dispute, the husband filed H.M.O.P.No.4 of 2005 for dissolution of marriage. The Sub Court, Salem, allowed the H.M.O.P. and granted decree of divorce. Challenging the said decree, the appellant wife filed C.M.A.No.24 of 2005, before the Additional District Court, Salem. The decree of divorce was confirmed by the first Appellate Court also.

4. Therefore, the present civil miscellaneous second appeal is filed mainly on the ground that whether the Trial Court and the First Appellate Court are right in not considering the grounds raised regarding the desertion and cruelty. In respect of the ground of desertion and cruelty under Hindu Marriage Act, the same depends on the facts and circumstances to be established by the parties by producing documents and evidence. But the fact remains that the parties are living separately now for more than 25 years.

5. It is brought to the notice of this Court that the husband got remarriage and children born from and out of the second marriage also. This being the factum now placed before this Court, there is no scope for further adjudication. This apart, the substantial question of law as contended by the learned counsel for the appellant deserves no merit consideration as the said question of law cannot be construed as a substantial question of law within the meaning of Section 100 of C.P.C.,

6. In respect of desertion, it is admitted that even during the litigation and at present, the parties are living separately for more than 25 years. This being the factum, this Court has no option except to confirm the judgment and decree passed by the Trial Court as well as the first Appellate Court.

7. Accordingly, the judgment and decree dated 23.11.2006 passed in C.M.A.No.24 of 2005, confirming the judgment and decree dated 07.07.2005 passed in H.M.O.P.No.4 of 2005 is confirmed. Consequently, C.M.S.A.No.5 of 2007 stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar



gsk
To

1. The Additional District Judge
Fast Track Court- I, Salem.

2. The Subordinate Judge, Mettur.

Copy to
The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.R.Subramanian, Advocate sr 5603.

C.M.S.A.No.05 of 2007 and
M.P.Nos.1&2 of 2007

PVS (CO)
SP(07/09/2021)