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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.S.A.NO.2 OF 2020

Ramasamy
Son of Perumal
14, Marakanam Road, Gopalapuram
Back side of Housing Board
Thindivanam
and now residing at
No.5, Kamaraj Street
Dr.Radhakrishnan Nagar
Ariyankuppam Post
Puducherry - 0078

.. Appellant/Appellant/
Petitioner

.Vs.

Kangadevi
Wife of Ramasamy
No.5, Kamaraj Street
Dr.Radhakrishnan Nagar
Puducherry - 007
and residing at
No.5, Kamaraj Street
Dr.Radhakrishnan Nagar
Ariyankuppam Post
Puducherry- 007

.. Respondent/Respondent/
Respondent

Civil Miscellaneous Appeal filed under Section 28 of the Hindu Marriage Act r/w Section 100 CPC, to set aside the judgment and decree dated 27.06.2019 passed in C.M.A.No.2 of 2017 on the file of the Principal District Court, Villupuram, confirming the judgment and decree dated 21.10.2016 passed in H.M.O.P.No.94 of 2009 on the file of the Principal Subordinate Court, Thindivanam.

For Appellant : Mr.S.C.Vishwanth

For Respondent : Notice sent unclaimed



JUDGMENT

The judgment and decree dated 27.06.2019 passed in C.M.A.No.2 of 2017 on the file of the Principal District Court, Villupuram, confirming the judgment and decree dated 21.10.2016 passed in H.M.O.P.No.94 of 2009 on the file of the Principal Subordinate Court, Thindivanam, is under challenged in the present civil miscellaneous second appeal.

2. The appellant/husband in this case got married thrice. For the first wife of the appellant/husband, one daughter was born. After the demise of his first wife, in order to maintain himself and his daughter born from and out of the wedlock between him and his first wife, appellant/husband got married again. The second wife also got divorce. Thereafter, the marriage between the appellant/husband and the respondent/wife was solemnized on 12.06.1992 as per hindu rites and custom and during the year 1993, a female child was born from and out of the wedlock between the appellant/husband and the respondent/wife. The appellant/husband and the respondent/wife started their life happily and thereafter, misunderstanding arose between them and started living separately.

3. The appellant/husband filed H.M.O.P. proceedings by raising an allegation that the respondent/wife has an illicit relationship with another person. The said allegation was disputed by the respondent/wife and the trial Court adjudicated the issues with reference to the documents and evidences. The trial Court found that the illicit relationship of the respondent/wife with another person was not established. The appellant/husband has not filed any complaint against the respondent/wife in spite of the allegation that he has witnessed such illicit relationship. Therefore, there was a doubt regarding the allegation and the trial Court formed an opinion that the allegation was not established. The trial Court has held that mere separation would not be a ground for the grant of dissolution of marriage.

4. The appellant/husband preferred an appeal in C.M.A.No.2 of 2017. The first appellate Court independently adjudicated the facts with reference to the documents and evidences and based on the findings of the trial Court. The findings of the first appellate Court is unambiguous. Once the appellant/husband raises an allegation of adultery, then, he has to implead the alleged paramour as party to the divorce proceedings. Allegedly no such adulterer has been impleaded as a respondent in the divorce petition. This apart, the allegation is that the appellant/husband personally witnessed the illicit relationship, but, the action initiated on seeing such incident was not established and therefore, the first appellate Court had a



reasonable doubt with reference to the allegation raised against the respondent/wife.

5. The allegation of adultery is a serious one affecting the character and integrity of either of the spouse. Once such serious allegations are raised, the necessary parties are to be impleaded and such allegations are to be established beyond any doubt.

6. In the present case at hand, the appellant/husband raised an allegation of adultery. However, he has not impleaded the adulterer as party to the divorce proceedings and he could not able to establish even the allegation raised in the petition. The first appellate Court considering the deposition of the witnesses, made a finding that, Sivasankar (PW2) was examined to prove adultery, but, as per his evidence, he heard the illegal intimacy only through the appellant/husband. Thus, Sivasankar (PW2) is a hearsay evidence. Exs.P5 to P12 documents are made only after the filing of H.M.O.P. Ex-P13 is the counter affidavit filed by the wife of one Sekar in H.M.O.P.No.136 of 2004, but, the wife was not examined. The details of the adulterer has not been shown in the petition. Thus, Ex-P13 cannot be taken as a evidence. Except Sivasankar (PW2), no other person was examined to prove the illicit intimacy and also, he is a hearsay evidence.

7. Under such circumstances, the first appellate Court arrived at a conclusion that the trial Court has not committed any perversity and accordingly, confirmed the judgment and decree.

8. Let us consider the substantial questions of law raised in the present appeal. The appellant/husband raised the following two substantial questions of law, which reads as under:

"a. Whether the Courts below were right in dismissing the plea of appellant contrary to the witness of PW2?

b. Whether the Courts below were right in dismissing the petition and appeal of the petitioner where the circumstantial evidences stands in favour of the appellant in all sides?"

9. Both the substantial questions of law are relatable to the facts and circumstances. The factual matrix in depth were considered by the Courts below. When the facts, circumstances and evidences were elaborately considered by the trial Court, which was confirmed by the first appellate Court, this Court need not reconsider such facts and circumstances, unless, there



is an error apparent, which requires an interference. In the present case, no such error is found and thus, this Court has no hesitation in arriving at a conclusion that the appellant/husband has not raised any acceptable substantial questions of law warranting interference from the hands of this Court.

10. Accordingly, the judgment and decree dated 27.06.2019 passed in C.M.A.No.2 of 2017 on the file of the Principal District Court, Villupuram, confirming the judgment and decree dated 21.10.2016 passed in H.M.O.P.No.94 of 2009 on the file of the Principal Subordinate Court, Thindivanam, stands confirmed. As a sequel, this civil miscellaneous second appeal is dismissed. No costs.

Sd/-
Assistant Registrar(P & A)

//True Copy//

Sub Assistant Registrar

nsd

To

1. The Principal District Judge,
Villupuram.
2. The Principal Subordinate Judge,
Thindivanam.

Copy To
The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.S.C.Vishwanth, Advocate, S.R.No.18544

C.M.S.A.No.2 of 2020

NR(CO)
CS/29/10/2021