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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.1287 of 2012

and

M.P.No.1 of 2012

Jerome David

...Appellant/Respondent

Vs.

Lettishiya

...Respondent/Petitioner

PRAYER : Civil Miscellaneous Appeal is filed under Section 55 of Indian Divorce Act, against the fair order dated 12.12.2011 passed by the Principal District Judge, Villupuram in O.P.No.44 of 2008.

For Appellant : M/s.S.P.Arthi

For Respondent : No appearance

J U D G M E N T

The appellant herein is the respondent in O.P.No.44 of 2008 filed by his wife seeking divorce under Section 10 (X) of Indian Divorce Act, by dissolving the marriage between herself and the respondent / husband which was solomized on 27.01.2005.

2. The appellant being the respondent in O.P.No.44 of 2008, contested the case.

3. After full trial, the petition was allowed and divorce was granted infavour of his wife/ respondent herein by the learned Principal District Judge, Villupuram, dated 12.12.2011. Aggrieved by the order, the appellant preferred this Civil Miscellaneous Appeal.

4. The question of law that arises for Consideration as to, (i) whether the trial Court without discussing the facts of the case erroneously granted divorce in favour of the respondent herein by mere taken into account of the mistake committed by the appellant in the last paragraph on his counter statement ?

5. The facts reveals that on 27.01.2005, the marriage was solomized between the appellant and the respondent at St.Xavier's Church, Napalaya Street, Villupuram as per Christian rites. According to the respondent / wife due to the ill-



treatment and cruelty made by the appellant and his family member, she was forced to leave the Matrimonial home in the year 2008. But, even after the marriage, the appellant has not treated her with love and affection, and the jewels of 75 sovereigns presented by her parents was also taken away by the respondent and his family members, and also she had narrated various facts which caused mental agony to her.

6. The appellant / husband contested the said petition by filing his counter statement. On the side of the appellant P.W.1 was examined, Ex.P.1 to Ex.P.5 were marked and on the side of the respondent Ex.R.1 to Ex.R.7 were marked and the witnesses were examined as R.W.1 and R.W.2, before the Principal District Judge, Villupuram.

7. While disposing the said petition, the Trial Judge, in his judgment at paragraph Nos.12 and 13 gave a reason for granting divorce to the appellant. The relevant portion of the judgment are as follows:

"having admitted preparedness and go with the dissolution of marriage and filed counter"

" the respondent having once admitted and even prayed in the counter for the dissolution of marriage cannot turn back and protest against the averments of the petition....."

8. So apart from the evidence, the trial Judge, based upon the admission made by the appellant, in his counter statement, stated that he is also willing for dissolution of marriage, and allowed the O.P.No.44 of 2008 filed by his wife. Accordingly, the marriage was dissolved by way of divorce decree.

9. The learned counsel for the appellant submitted that while filing the counter statement by the appellant, he denied all the allegations and stated the facts what was really happened, but mistakenly, at the end of the counter statement instead of praying to dismiss the petition, he erroneously mentioned to allow the application, but that mistake was erroneously appreciated by the Trial Judge and granted the divorce without discussing the facts of the case on merits. So, he prayed to set aside the order passed by the Trial Judge and also contend that there is no valid evidence on the side of the respondent. But on perusal of the entire counter statement in paragraphs Nos.1 to 15, this appellant narrated certain facts between himself and his wife which was happened after their marriage.

10. On seeing the Paragraph No.16, the appellant clearly mentioned as follows:

"...in the interest of both the family members has no option but to give consent for divorce. The



petitioner had deserted the respondent since October-05 without any valid reason and justifiable cause and has initiated on her own accord.....

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It is therefore, prayed that this Court may please to allow the petition for divorce dissolving the marriage took place on 27.01.2007."

11. On seeing the averments in the counter statement filed by the appellant, it clearly reveals that due to the alleged desertion caused by his wife from the year 2005 onwards, he has no option but to give consent for divorce.

12. Therefore, the arguments advanced by the appellant counsel that this appellant mistakenly mentioned in his counter statement that to allow the application is unsustainable one for the reason that he opted for divorce with clear state of mind.

13. Thus the learned Trial Judge while discussing all the facts and the intention of the appellant was taken into consideration through his counter statement and granted divorce is sustainable one. Hence the appeal filed by the appellant is not maintainable. Accordingly, the Civil Miscellaneous appeal is dismissed. Consequently connected Miscellaneous petition is closed. No Costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The Principal District Judge,
Principal District Court,
Villupuram.

C.M.A.No.1287 of 2012
and
M.P.No.1 of 2012

RSV[co]
NSK 15/09/2021