

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.02.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

C.M.A. No.1890 of 2015
and C.M.P. Nos.1318 & 1319 of 2018

G.Paul Sebasstian ... Appellant/Petitioner

-vs-

S.Gifta Kezhiya ... Respondent/Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 55 of the Indian Divorce Act to set aside the judgment and decree passed in I.D.O.P. No.140 of 2011 dated 17.06.2015 by the District Judge, Thiruvallur and Thiruvallur District by allowing this Civil Miscellaneous Appeal.

For Appellant : Mr.S.Kamadevan for
Mr.P.Ganesan

For Respondent: Mr.G.Thiyagarajan for
Mr.T.Ravi

JUDGMENT

(Judgment of this Court was made by T.RAJA,J.)

This appeal has been directed against the impugned decretal order and judgment dated 17.06.2015 passed by the learned District Judge, Thiruvallur in I.D.O.P. No.140 of 2011 dismissing the prayer of the appellant husband for grant of divorce filed under Section 10(i)(x) of the Indian Divorce Act and dissolving the marriage solemnised on 30.03.2008.

2.Mr.S.Kamadevan, learned counsel appearing for the appellant husband, assailing the impugned findings and conclusion reached by the District Judge, Thiruvallur, submitted that after solemnisation of marriage between the appellant and the respondent on 30.03.2008 at Samathana Jeba Veedu, Periyannayanpalayam, Coimbatore, they were blessed with a male child on 27.11.2009 and thereafter, the appellant came to know

that the respondent was a divorcee. Learned counsel for the appellant further submitted that the respondent wife, willfully and deliberately misled the appellant stating that she was a spinster, got married him. In support of his contention, learned counsel for the appellant has taken us to the letter given by the Pastor of the Church, who performed the marriage between them, wherein the Pastor has mentioned that the respondent had suppressed the facts of her marital status and about her earlier marriage and divorce and she furnished the false and wrong details that she was a spinster. Therefore, the marriage solemnised on 30.03.2008 between the appellant and the respondent is liable to be dissolved as a nullity for the reason that the respondent has played fraud for contracting the marriage stating that she was a spinster though she was a divorcee.

3.Mr.G.Thiyagarajan, learned counsel appearing for the respondent wife, opposing the veracity and genuineness of the letter given by the Pastor, stating that the respondent has given false and wrong details that she was a spinster, argued that well before the marriage, the respondent has disclosed the fact that she was a divorcee and that the appellant was well aware of the previous marriage. After contracting the marriage, the appellant, for the reasons best known to him, made such allegations against the respondent wife for the purpose of running away from the matrimonial life. Considering these aspects, the District Court has proceeded with the matter, on merits.

4.Learned counsel appearing for the appellant, placing on record the additional documents filed under Order XLI Rule 27 of the Civil Procedure Code, which were allowed to be marked by this Court on 08.02.2021, submitted that those documents have to be properly considered by the District Court, Thiruvallur. Therefore, instead of wasting the valuable and precious time of this Court, the matter be remanded back to the District Court and while the fresh evidence

allowed to be taken on record, the appellant be permitted to raise some additional grounds.

5.Learned counsel for the respondent submitted that the respondent be permitted to file some additional documents and to raise some additional grounds before the District Court.

6.Therefore, accepting the joint request made by both the learned counsel, we are inclined to remand back the matter to the District Court, Thiruvallur for the purpose of looking into the fresh evidence placed before us under Order XLI Rule 27(2) of C.P.C. which states that wherever additional evidence is

allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

7. Accordingly, the impugned order passed by the District Judge, Thiruvallur is set aside and the matter is remanded back to the District Judge, Thiruvallur for considering the fresh evidence placed before us under Order XLI Rule 27 of C.P.C. Both the learned counsel are permitted to file additional documents and raise additional grounds, if any.

8. Since the matter is pending from the year 2011 and the parties are fighting endlessly, we direct the District Court, Thiruvallur to take up the matter and give a disposal, on merits, preferably within a period of six months from the date of receipt of a copy of this order. Accordingly, the appeal stands disposed of. Consequently, connected C.M.Ps are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vga

To

1. The District Judge, Thiruvallur.

2. The Section Officer,
V.R. Section,
High Court, Madras.

+2ccs to P. Ganesan, Advocate, Sr.No. 11973

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AD(CO)
RMP(15/03/2021)

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