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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19-01-2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

CMSA No.25 of 2006

And

MP Nos.1 of 2010 and 1 of 2015

And

CMP No.9064 of 2020

U.Dhandayuthapani .. Appellant/Respondent/Petitioner

vs.

Sasikala .. Respondent/Appellant/Respondent

PRAYER : Civil Miscellaneous Second Appeal is preferred under Section 13(1)(1A) of the Hindu Marriage Act 25 of 1955 r/w Section 100 of the Code of Civil Procedure against the judgment and decree dated 14.02.2006 made in CMA No.7 of 2003 on the file of the Principal District Court, Namakkal, reversing the judgment and decree dated 10.08.2001 made in HMOP No.69 of 1995 on the file of the Sub Court, Sankari

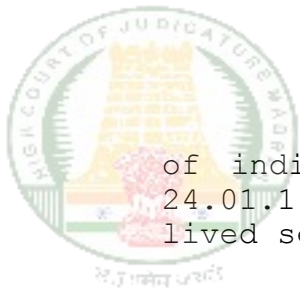
For Appellant : Mr.N.Manokaran

For Respondent : Ms.K.Kavitha for
Mr.S.B.Viswanathan

J U D G M E N T

The judgment and decree dated 14.02.2006 passed in CMA No.7 of 2003 on the file of the Principal District Court, Namakkal, reversing the judgment and decree dated 10.08.2001 passed in HMOP No.69 of 1995 on the file of the Sub Court, Sankari, are under challenge in the present Civil Miscellaneous Second Appeal.

2. The facts in nutshell to be considered for the purpose of deciding the present Civil Miscellaneous Second Appeal are that the marriage between the appellant and the respondent was solemnized on 12.09.1993 in Arulmighu Ayyappasamy Prayer Hall, Komarapalayam as per Hindu Rights and Customs. Unfortunately, the spouses left the matrimonial home on account



of indifferences between them on 24.01.1994. Admittedly, from 24.01.1994 onwards, both the appellant and the respondent have lived separately for the past 26 years.

3. On 15.07.1994, a girl child was born from and out of the wedlock between the spouses. In view of the fact that the appellant and the respondent left the matrimonial home and were living separately, a legal notice was issued by the appellant on 02.08.1995 and a reply notice was sent by the respondent on 11.08.1995. Subsequently, the appellant-husband filed HMOP No.69 of 1995 on 20.09.1995 before the Sub Court, Sankari for divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955 on the ground of cruelty.

4. The Sub Court, Sankari granted divorce on 10.08.2001 on the following grounds:-

- (i) Respondent had refused for physical relationship even on the nuptial date on the reason of aversion.
- (ii) Continuous refusal of respondent to perform her marital obligation towards her husband.
- (iii) Respondent had suppressed the factum of fracture of pelvic bone and the medical treatment given to her.
- (iv) Attempted to commit suicide on two occasions i.e., 08.12.1993 and 24.01.1994.
- (v) Skin disease suffered by respondent was not disclosed.
- (vi) False criminal complaint was given against the husband.
- (vii) Respondent left the matrimonial home without any justifiable cause and failed to take any steps for reunion.

5. Challenging the said order of resolution of marriage passed by the Sub Court, Sankari, the respondent-wife filed CMA No.7 of 2003 and the said Civil Miscellaneous Appeal was allowed by the learned Principal District Judge on the following grounds:-

- (i) Mild skin eruptions and cured after treatment.
- (ii) Husband did not take steps for reunion.
- (iii) Suicide attempt has not been proved. Wife was suffering from pregnancy related issues and took tablets.
- (iv) PW-2 is an employee of the appellant and his evidence cannot be believed.
- (v) Father of the husband was not examined. Hence, it is fatal.
- (vi) No medical test was conducted to find out pelvic bone fracture.
- (vii) Respondent/wife gave birth a child, therefore, they had physical relationship.
- (viii) Police complaint was given only to prevent the appellant from getting second marriage.



6. The said judgment and decree of the Principal District Judge is now under challenge in the present Civil Miscellaneous Second Appeal.

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7. The facts are not disputed between the parties. The questions of law raised by the appellant in the present Civil Miscellaneous Second Appeal are as follows:-

(a) Whether the attempt to commit suicide, sexual non-cooperation, incurable skin disease, quarrel in the first night, suppression of fracture in the pelvic bone, giving false police complaint, failure to do matrimonial obligation, disrespect shown, frustration etc., would amounts "Cruelty" under Section 13(1)(ia) of the Hindu Marriage Act, 1955, if so whether the appellant/husband has made out a case to get a decree for divorce on the ground of cruelty ?

(b) Whether the First Appellate Court is right in law in refusing to grant decree for divorce in spite of irretrievable broke down of marriage particularly when long separate staying of the couple would make it impossible for them to live together as husband and wife in the light of the decision reported in 2005 (4) CTC 287 SC ?

(c) Whether there was proper casting of burden of proof by the Lower Appellate Court especially seeking corroboration in the facts of the present case would go against the facts of life and reality ?

8. This Court is of the considered opinion that the definition of the cruelty contemplated under the Hindu Marriage Act, 1955 has got wider meaning. What amounts to cruelty is the subjective satisfaction of the Court and whether such acts, omission or commission of either of the spouses amounts to cruelty or not.

9. As far as the second question of law is concerned, in spite of irretrievable broke down of marriage, particularly, when the spouses are living separately for many number of years and there is no scope for reunion, whether the First Appellate Court is right in reversing the dissolution of marriage granted by the Trial Court.

10. The interesting question of law raised thirdly by the appellant is connected with the philosophy of life and undoubtedly, such a ground is also to be considered, more specifically, in matrimonial issues.

11. Practical and pragmatic approach is required by the Courts, more specifically, in matrimonial issues, the Law cannot bind the relationship. The law can impose certain conditions, so as to protect the contract of marriage, living together and



respecting each other and harmonious living are connected with the mind set of persons concerned and it is a way of right and therefore, beyond the scope of law, the matrimonial issues are to be decided with certain facts and circumstances, more specifically, with reference to the conduct of the spouses.

12. For example, under Section 9 of the Hindu Marriage Act, 1955, petitions can be filed for restitution of conjugal rights. The Court may allow such petitions. However, the Court cannot enforce the order by making the spouses to live together. Therefore, the Courts can issue orders for resumption of matrimonial home, but the actual reunion or consummation of marriage is to be done only at the will and wish of the spouses and the Court cannot inflict any such acts to be done by the spouses in the matrimonial home. Therefore, passing an order may remain in paper, but such an order can be for grant of divorce in a subsequent petition. But such restitution of conjugal rights cannot be implemented unless the parties voluntarily agree for reunion shown in a matrimonial home. These all are the aspects to be considered while deciding the matrimonial issues.

13. This Court is of the considered opinion that the Trial Court granted dissolution of marriage on several grounds. The First Appellate Court reversed the order on certain grounds. Undoubtedly, both the Courts have given its own reasons in a particular manner based on the documents and the evidences.

14. Ultimately, the fact remains that the spouses are not living together even after a lapse of about 26 years. The question arose whether any purpose would be solved in the event of rejecting the present Civil Miscellaneous Second Appeal. In the event of dismissing the present Civil Miscellaneous Second Appeal, the marriage will remain valid and it will be practically invalid for the purpose of peaceful living. This should not sense any purpose as far as the spouses are concerned.

15. When they strongly decided to live separately and living separately for the past 26 years, there is no reason whatsoever refusal of grant of dissolution of marriage and such a refusal is not only impracticable, but would not solve the issues or do service to the cause of justice. Therefore, a pragmatic approach is required in matrimonial issues beyond the scope of the ground raised in this Civil Miscellaneous Second Appeal. Matrimonial appeals cannot be decided similar to that of a property suit or a recovery of money suit etc. Matrimonial issues have got certain peculiar aspects related to emotions, personal feelings and other aspects, which all are relevant to be considered by the Courts, while deciding such petitions under the Hindu Marriage Act, 1955.



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16. If at all, this Court, on appreciation, arise a conclusion that the Trial Court is right or the First Appellate Court is right. In either case, the issues are not going to be solved as the learned counsel appearing on behalf of the respective parties very strongly informed that there is no possibility of reunion and they are living separately for the past 26 years and therefore, the parties are interested in harassing each other or interested in getting back some properties or otherwise. In this regard, a civil suit in O.S.Nos.388 of 2006 and 408 of 2002 are also instituted by the daughter of the appellant for partition. So the property rights are to be adjudicated in those suits by the respective parties and as far as the matrimonial dispute is concerned, it is brought to the notice of this Court that the appellant-husband is aged about 63 years and the respondent-wife is aged about 50 years.

17. This being the factum established, this Court is not inclined to adjudicate the merits and demerits of the grounds on which the judgment and decree were passed by the Trial Court as well as the First Appellate Court. But the fact remains that the spouses are living separately for the past 26 years and the appellant is aged about 63 years and the learned counsel for the appellant made a submission that even during the counselling some years back, the parties had informed that there is no possibility for reunion. Under these circumstances, this Court has no option but to confirm the judgment and decree passed by the Trial Court on 10.08.2001 in the interest of the parties and considering the facts and circumstances.

18. Accordingly, the judgment and decree dated 14.02.2006 passed by the learned Principal District Judge, Namakkal in CMA No.7 of 2003 stands set aside and the judgment and decree dated 10.08.2001 passed by the learned Sub Judge, Sankari in HMOP No.69 of 1995 stands confirmed and consequently, Civil Miscellaneous Second Appeal No.25 of 2006 stands allowed. However, there shall be no order as to costs. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

Svn



To

1.The Principal District Judge,
Principal District Court,
Namakkal.

2.The Subordinate Judge,
Sankari.

Copy To

The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.N.Manokaran, Advocate SR.No.3393

+1cc to Mr.S.B.Viswanathan, Advocate SR.No.2626

C.M.S.A.No.25 of 2006

CNR(CO)
GMY(01/07/2021)