



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.S.A.NO.49 OF 2011

M.Palanivel

... Appellant/Petitioner

.Vs.

R.Tamilselvi

... Respondent/Respondent

PRAYER:-

This Civil Miscellaneous Second Appeal is filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 07/06/2011 and made in C.M.A.No.12 of 2010 on the file of Principal District Judge, Namakkal, reversing the judgment and decree dated 24/02/2010 in H.M.O.P.No.51 of 2008, Sub Court, Tiruchengode.

For Appellant : Mr.P.Jagadeesan

For Respondent : Mr.S.Rajmakesh

JUDGMENT

The judgment and decree dated 07.06.2011 passed in C.M.A.No.12 of 2010, reversing the judgment and decree dated 24.02.2010 passed in H.M.O.P.No.51 of 2008 is under challenge in the present Civil Miscellaneous Second Appeal.

2. The substantial question of law raised in the grounds of the appeal reads as under:

(i) Whether or not the appellant is entitled to get a divorce on the ground that the respondent had deserted him and living separately for several years without any valid reason therefor?

(ii) Whether or not the respondent is guilty of desertion of the appellant and his daughter and living separately from the year 2001 and failed to



WEB COPY

take any efforts to rejoin the appellant or to see her daughter for all these years?

(iii) In the light of the fact that the marriage between the appellant and the respondent is a dead one and irretrievably broken, whether the lower appellate Court right in refusing to grant divorce as prayed for the appellant?

(iv) Whether the lower appellate Court right in holding that the respondent has not deserted the appellant, ignoring the evidence of PW1 & PW2 that the respondent had voluntarily deserted the appellant and she refused to come and join with him inspite of his request made in the year 2001 and 2005?"

3. The learned counsel appearing on behalf of the appellant mainly contended that the marriage between the appellant and the respondent became irretrievably broken down and there is no scope for reunion of Matrimonial life and therefore, the order passed by the First Appellate Court is to be set aside.

4. It is further contended that the trial Court granted the decree of divorce on the ground of desertion. However, the said ground of desertion even now exists, more specifically, during the pendency of the appeal. Thus, the appellant is entitled for the decree of divorce on the said ground, which was appreciated by the trial Court.

5. The marriage between the petitioner and the respondent was solemnized on 04.03.1993 as per the Hindu Rites and Customs. The appellant and the respondent started their Matrimonial life happily and a female child born from and out of the wedlock and now she attained the age of majority and completed her P.G.Course and continue to live along with her father.

6. The husband, on account of the misunderstanding, filed H.M.O.P.No.51 of 2008 for dissolution of marriage. The desertion of cruelty were the grounds taken and the trial Court adjudicated the issues with reference to the documents and evidences produced by the respective parties. The trial Court arrived a conclusion that the ground of desertion was established by the appellant/husband and accordingly, granted decree of divorce. The respondent/wife preferred an appeal before the First Appellate Court in C.M.A.No.12 of 2010. The First Appellate Court adjudicated the issues and set aside the judgment and decree passed by the trial Court. The First Appellate Court is of the opinion that the family members of the husband and wife were not examined and unless the family members



of the spouses were examined, it may not be possible for the trial Court to arrive a conclusion regarding the grounds raised by the appellant in the Divorce Petition. Thus, the trial Court committed an error and accordingly, set aside the judgment and decree passed by the trial Court.

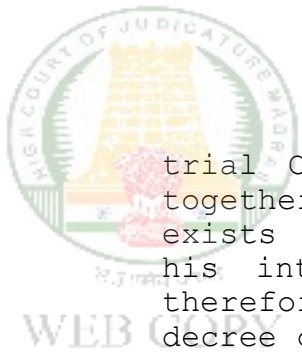
7. The present appeal is filed by the husband, reiterating that the grounds of desertion exists even now and further, the appellant was not living with the respondent even during the pendency of the Civil Miscellaneous Appeal before the First Appellate Court. Therefore, there is no reason whatsoever to reverse the judgment passed by the trial Court and thus, the judgment of the First Appellate Court is perverse.

8. This Court is of the considered opinion that beyond the evidences produced by the parties before the trial Court, it is an admitted fact that the appellant and the respondent are not living together for about 20 years. Then for the past 20 years, they are living separately and the daughter is taken care of by the appellant/husband and at this length of time, there is no reason to reject the ground raised regarding desertion. As stated by the appellant, the marriage between the appellant and the respondent became irretrievably broken down and even the girl child was brought up and educated by the appellant/husband all along and she has completed her Master's degree in International Business.

9. In order to consider the views of the daughter, this Court directed the parties to be present. Both the appellant, respondent as well as the daughter appeared before this Court. The daughter is not willing to go with the mother and she wants her father to arrange her marriage and for higher education or otherwise. However, she expresses that she is willing to talk with her mother and the learned counsel also states that they are speaking each other over phone and if necessary in person.

10. It is needless to state that the daughter is a major and she has completed her Master's degree, she is always at liberty to take a decision regarding her life, education or otherwise. Either the father or the mother cannot insist talking to each other or acting for the welfare of the girl in any manner. However, the appellant is not interested for reunion. The appellant, in clear terms, held that after a lapse of about 20 years, it may not be possible for him to live with the respondent/wife. Therefore, the request of the wife for reunion was not considered and there is no possibility in view of the long gap between the spouses.

11. This Court is of the considered opinion that all other grounds raised as well as the evidences produced before the



trial Court, the appellant and the respondent are not living together for more than 20 years and the ground of desertion exists even as of now and further, the appellant has expressed his intention that not to resume the Matrimonial home and therefore, this Court is of an opinion that the judgment and decree of the First Appellate Court is to be set aside.

12. Accordingly, the judgment and decree dated 07.06.2011 passed in C.M.A.No.12 of 2010, reversing the judgment and decree dated 24.02.2010 passed in H.M.O.P.No.51 of 2008 stands set aside and the decree of divorce granted by the trial Court in H.M.O.P.No.51 of 2008 is confirmed and the Civil Miscellaneous Second Appeal in C.M.S.A.No.49 of 2011 stands allowed.

13. The appellant/husband has made an assurance that he will inform about the marriage and other functions of the girl to the respondent/mother, whenever it is fixed and the mother will be permitted to participate in all the functions of the girl. The appellant/husband has no objections for inviting the respondent for the marriage of their daughter. No costs. Connected miscellaneous petition is closed.

Sd/-
Deputy Registrar(TNMCC)

//True Copy//

Sub Assistant Registrar

Kak

To

1. The Principal District Judge,
Namakkal.
2. The Sub Court,
Tiruchengode.

Copy To:-

The Section Officer,
V.R. Section,
High Court, Madras - 104.

+1cc to Mr.P.Jagadeesan, Advocate, S.R.No.7971

C.M.S.A.NO.49 OF 2011

CP(CO)
PBS/26/10/2021