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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.S.A.NO.39 OF 2015

Suresh

.. Appellant/Petitioner

Vs.

Jayasudha

.. Respondent/Respondent

PRAYER: This Civil Miscellaneous Second Appeal is filed under Section 28 of Hindu Marriage Act, against the judgment and a decree dated 10.07.2015 passed in C.M.A.No.40 of 2013 on the file of the Principal District Judge, Cuddalore dismissing the appeal and confirming the judgment and decree dated 1.8.2013 passed in H.M.O.P.No.21 of 2010 on the file of the Principal Subordinate Judge, Cuddalore.

For Appellant : Mr.D.Baskar

For Respondent : Not ready in notice

JUDGMENT

The Civil Miscellaneous Second Appeal is preferred against the judgment and decree dated 10.07.2015 passed in C.M.A.No.40 of 2013 on the file of the Principal District Judge, Cuddalore, confirming the judgment and decree dated 1.8.2013 passed in H.M.O.P.No.21 of 2010.



2. The appellant filed the petition under Section 13(1) (ia) of the Hindu Marriage Act, seeking Dissolution of marriage. The marriage between the appellant and the respondent was solemnized on 11.09.2008 as per the Hindu Rites and Customs. On account of certain disputes, the appellant filed a petition for divorce. The Trial Court adjudicated the issues with reference to the documents and evidences produced by the respective parties and dismissed the petition on the ground that the appellant had not established the allegations set out in the petition against the respondent/wife. The appellant filed C.M.A.No.40 of 2013 before the First Appellate Court and the First Appellate Court also elaborately considered the facts and circumstances and arrived a conclusion that the judgment and decree passed by the trial Court is in consonance with the established principles and accordingly, confirmed the judgment of the trial Court by dismissing the appeal filed by the appellant. The First Appellate Court made a categorical finding that the Principal Sub Judge, Cuddalore has elaborately discussed as to why the contents of Ex.P3 and Ex.P4 cannot be taken into account. In view of the reasonings given by the Trial Court are candid and convincing, the First Appellate Court dismissed the appeal.

3. Coming to the present Civil Miscellaneous Second Appeal, the question of law raised by the appellant are as follows:

“a) Whether the Courts below were not at gross error in failing to see that accusation of adultery amounts to mental cruelty entitling the husband to divorce?

b) Did not the courts below grossly erred in not considering the recorded evidence which is proof of cruelty.

c) Did not the lower courts fail to appreciate the fact that respondent has deserted the petitioner and has also refused access to the child, amounting to cruelty?

d) Is not the judgment of the trial Court summary in nature?

e) Is not the judgment of the appellate court perverse?”



5. Accordingly, the judgment and decree judgment and decree dated 10.07.2015 passed in C.M.A.No.40 of 2013 on the file of the Principal District Judge, Cuddalore, confirming the judgment and decree dated 1.8.2013 passed in H.M.O.P.No.21 of 2010 stands confirmed and consequently, the Civil Miscellaneous Second Appeal in C.M.S.A.No.39 of 2015 is dismissed. No costs.

Sub Assistant Registrar

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

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+1cc to Mr.D.Baskar, Advocate, S.R.No.7596

C.M.S.A.No.39 of 2015

VGII(CO)
RLP(15/09/2021)