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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.S.A.No.35 of 2012

Jayachandra Chowdry ... Appellant / Petitioner

Vs.

K.Sandhya .. Respondent / Respondent

Prayer : Civil Miscellaneous Second Appeal filed under Section 28 of the Hindu Marriages Act r/w.100 C.P.C., against the judgment and decree dated 27.07.2011 in C.M.A.No.14 of 2008 on the file of the Addl. District Judge, Fast Track Court III, Trivellore, confirming the judgment and decree dated 08.07.2005 in H.M.O.P.No.70 of 1998 on the file of the Sub Judge, Trivellore.

For Appellant : Mr.R.Selvakumar

J U D G M E N T

The judgment and decree dated 27.07.2011 in C.M.A.No.14 of 2008, confirming the judgment and decree dated 08.07.2005 in H.M.O.P.No.70 of 1998, is under challenge in the present civil miscellaneous second appeal.

2. The substantial question of law raised in this appeal is whether the Courts below are right in dismissing the petition for divorce filed under Section 13(1)(ib) when admittedly the appellant and the respondent are living separately for more than 10 years.

3. The marriage between the petitioner and the respondent was solemnized on 05.07.1995 as per Hindu Rites and Customs. The learned counsel for the appellant states that the appellant and the respondent were living hardly for eight days and thereafter, the difference of opinion arose and they are living separately.

4. It is contended that they are living separately for about 25 years. The H.M.O.P. was filed in the year 1998 itself. Even during the pendency of the litigation, they had no occasion for reunion and they continued to live separately. When the matter came by way of an appeal before the first Appellate Court



in C.M.A.No.14 of 2008, the said grounds were raised and the first Appellate Court also committed an error in not considering the admitted fact regarding the desertion which is a main ground for divorce under the provisions of the Hindu Marriage Act.

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5. This Court is of the considered opinion that admittedly after one or two weeks from the date of marriage, there was a dispute between the spouses and they are living separately for about 25 years. When the ground of desertion was admitted between the parties during the course of the trial, the Courts ought to have considered the said ground for granting divorce. The other allegations are factual in nature which deserves no adjudication by this Court in the second appeal. As far as the ground of desertion is concerned, it is patently not considered by both the Courts in spite of the fact that the spouses are living separately for about 25 years.

6. This Court is of the considered opinion that when there is no possibility of reunion for several years and the marriage became a total failure, then, there is no point in declining the relief of divorce to either of the parties approaching the Court of law. In the present case, the appellant filed H.M.O.P. in the year 1998 and the first appellate Court decided the appeal on 27.07.2011. Even during the 13 years of litigation, the parties were living separately. This being the factum, this Court is of the opinion that there is no possibility for reunion at this length of time as the appellant is also aged about 67 years. The Trial Court as well as the first Appellate Court committed an error in not considering the ground of desertion in spite of the fact that it was admitted by the parties during the course of evidence.

7. Under these circumstances, the judgment and decree dated 27.07.2011 passed in C.M.A.No.14 of 2008 confirming the judgment and decree dated 08.07.2005 passed in H.M.O.P.No.70 of 1998, is set aside and C.M.S.A.No.35 of 2012 stands allowed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar



1.The Additional District Judge,
Fast Track Court III, Tiruvallur,

2.The Sub Judge, Tiruvallur.

+1cc to Mr.Selvakumar, Advocate, S.R.No.6988

C.M.S.A.No.35 of 2012

PA(CO)
SB(09/09/2021)