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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.02.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.S.A.No.3 of 2012

Santhi Sundararajan

...Appellant/Appellant/Respondent

Versus

1.P.S.Aswini Rama Priya

2.P.S.Harini

3.N.Amirthavalli

...Respondents/Respondents/LR's

Prayer: Civil Miscellaneous Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree of the learned Additional District Judge, (Fast Track Court No.2) Gobichettipalayam, in C.M.A.No.56 of 2010 dated 24.08.2011, confirming the fair and final order of the learned Subordinate Judge of Gobichettipalayam in H.M.O.P.No.91 of 2008 dated 30.06.2010.

For Appellant : Mr. S. Kaithamalai Kumaran

For Respondents : Mrs. D. Sathya, for RR1 & 2
Mr. M. Narayanaswamy, for R3

J U D G M E N T

The deceased husband Mr.P.N.Sundararajan, filed H.M.O.P.No.91/2008 for dissolution of marriage. The marriage between the appellant as well as the deceased Sundararajan was solemnised on 01.09.1985, as per hindu rites and customs. The petition for divorce was allowed by the Sub Court, Gobichettipalayam on 30.06.2010. The appellant/wife filed C.M.A.No.56/2010 and the Additional District Court (FTC-2), Gobichettipalayam, confirmed the judgment and decree passed in H.M.O.P.No.91/2008 on 24.08.2011. The concurring judgments passed by the Sub Court as well as the District Court is challenge in the present civil miscellaneous second appeal.

2. Even before filing C.M.A.No.56/2010 and after the judgment in H.M.O.P., husband Mr.P.N.Soundararajan died. The legal heirs of Soundararajan were impleaded in the interest of family and further considering the fact that the husband died, the parties have arrived a compromise and the memo of compromise is filed before this Court which reads as under:-



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"1. The respondents 1 and 2 in the above appeal are daughters of the appellant. The 3rd respondent is the mother-in-law of the appellant. The petitioner and respondents 1 and 2 are living together.

2. The husband of the appellant namely late Sundararajan filed a petition H.M.O.P. 91/2008 on the file of Sub Court, Gobichettipalayam against the appellant for divorce on the ground of cruelty and desertion. The same was contested.

3. The trial Court by judgment and decree dated 30.06.2010 allowed the petition for divorce. The appeal C.M.A.No.56/2010 was also dismissed. Sundararajan died after the judgment and prior to the filing of C.M.S.A.No.3/2012 Sundararajan left behind him his daughters the respondents 1 and 2 herein and the 3rd respondent who is his mother as his heirs. Hence, in C.M.S.A.3/2012 they were added as the respondents. Even after the 1st appellate Court confirmed the decree of divorce the respondents were treating the appellant only as the wife of Sundararajan ignoring the decree of divorce.

4. The appellant and respondents 1 to 3 herein have now no dispute among themselves to be decided. They continue to live as one family. In the interest of family, this memo of compromise is entered into between the appellant and respondents 1 to 3 herein. The respondents 1 to 3 in the above appeal have no objection for the above appeal to be allowed. In the interest of family, this petition is filed to record the compromise between the parties. The respondents 1 to 3 have no objection for the above appeal to be allowed and the Decree of Divorce between the appellant and her deceased husband to be set aside.

5. It is therefore prayed that this Hon'ble Court may be pleased to record this memo of compromise and thus render justice."

3. The learned counsel for the third respondent mother of Soundararajan raised an objection that certain other disputes with reference to the properties are yet to be resolved, this Court is of the considered opinion that those property issues are unconnected with the present appeal, as the present appeal is filed challenging the judgment and decree passed in a matrimonial dispute under the Hindu Marriage Act. In fact, the decree of divorce was granted between the husband and wife and the said divorce was confirmed by the First Appellate Court. This being the nature of dispute in this litigation, the other



disputes in connection with the properties are no way connected in the present appeal and the parties are at liberty to resolve the dispute in the manner known to law.

4. As far as the present appeal is concerned, the memo of compromise is to be taken into account, as the parties are not interested in pursuing the matrimonial dispute between the deceased husband and the appellant-wife. Thus, they have agreed to arrive at a conclusion that the order is to be set aside and the appeal is to be allowed. This apart, the mother-in-law in a matrimonial dispute between the husband and wife is an unnecessary party. However, as a matter of course, all the legal heirs are impleaded in the matrimonial dispute. This being the factum, based on the compromise memo filed as above, the judgment and decree dated 24.08.2011 passed in C.M.A.No.56/2010 confirming the judgment and decree dated 30.06.2010 passed in H.M.O.P.No.91/2008 are set aside and C.M.S.A.No.3/2012 is allowed. No costs.

* Xerox copy of Memo of Compromise is enclosed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

AT

To

1. The Additional District Judge, (Fast Track Court No.2),
Gobichettipalayam
2. The Subordinate Judge,
Gobichettipalayam.

COPY TO:

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

+1 CC to Mr.S.Kaithamalai Kumaran, Advocate, Sr.No. 6488.

+1 CC to Mr.M.Narayana Swamy, Advocate, Sr.No. 6449.

C.M.S.A.No.3 of 2012

RLD(CO)
LS(05/10/2021)