



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2021
CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.S.A.NOS.18 & 19 OF 2013
M.P.NO.1 OF 2013

Anandakrishnan

.. Appellant in both Appeals

.vs.

Pushpalatha

.. Respondent in both Appeals

COMMON PRAYER : Civil Miscellaneous Second Appeals filed under Order XXVIII of C.P.C read with Section 100 of C.P.C against the judgment and decree dated 09.10.2012 passed in C.M.A.Nos.43 & 41 of 2008 on the file of the District Court, Tiruvarur and reversing the Decree and Judgment passed on 14.03.2008 in H.M.O.P.Nos.44 & 97 of 2005 on the file of the Sub-ordinate Judge, Tiruvarur.

In both Appeals

For Appellant : Mr.A.Ganesan

For Respondent : Mr.M.Thamizhavel

COMMON JUDGMENT

The common judgment in C.M.A.Nos.41 and 43 of 2008 dated 09.10.2012 reversing the common judgment passed by the Sub-Court, Thiruvarur in H.M.O.P.Nos.44 & 97 of 2005 dated 14.03.2008 is under challenge in the present Civil Miscellaneous Second Appeals.

2. The husband is the appellant, who instituted a petition for dissolution of marriage. Simultaneously, the respondent/wife filed a petition for restitution of conjugal rights. Both petitions were tried together. The marriage between the petitioner and the respondent was solemnized on 16.06.1999 at Thiruvarur, as per the Hindu Rites and customs. A female child was born from and out of the wedlock and now aged about 20 years. The trial Court adjudicated the issues with reference to the grounds raised, more specifically, cruelty and desertion. The trial Court granted dissolution of marriage, against which, the wife filed Civil Miscellaneous Appeal and the First Appellate Court dismissed the divorce petition and allowed the petition for restitution of conjugal rights.



WEB GATES

3. The substantial question of law raised in the second appeals is that whether the respondent can be allowed to enjoy the fruits of set aside order passed in C.M.A.No.43 & 41 of 2008 against H.M.O.P.No.97 of 2005 on the file of the District Court, Tiruvarur and Sub-ordinate Court, Tiruvarur; whether the respondent is got maintenance amount at a same time from HMOP proceedings and as well as in the proceedings under Criminal Procedure Code;

4. Though the substantial question of law raised are relatable to the facts, this Court is of the considered opinion that the learned counsel appearing on behalf of the appellant now raised a ground that even after the dismissal of the petition for divorce filed by the respondent and after passing an order for restitution of conjugal rights in the year 2012, both the appellant and the respondent are living separately for more than 15 years. Thus, the marriage become irretrievably broke down and the allegations are being raised between the parties even now. When there is no scope for resumption of matrimonial life, there is no purpose in continuing the litigation and non-implementation of the decree of restitution is also a ground for divorce and further, the respondent/wife is also not willing for re-union and the ground of desertion is also existing between the parties.

5. Several allegations are raised regarding the cruelty. The appellant states that the respondent has never shown any respect towards him as he is not possessing a educational qualification and completed SSLC. Per contra, the respondent/wife had completed Chartered Accountant and she has possessed many other educational qualifications. By virtue of the higher qualification, there was no compatibility between the husband and wife. Therefore, the appellant could not able to continue the matrimonial home with the respondent. Even, he was not allowed to free in the home. Several such allegations were raised. The trial Court adjudicated the issues and granted the decree of divorce and dismissed the petition for restitution.

6. The First Appellate Court set aside the judgment and decree of the trial Court mainly on the ground that the desertion was about 1 ½ years which was insufficient to grant the decree of divorce. The cruelty was also not established so as to grant dissolution of marriage.

7. This Court is of the considered opinion that on account of efflux of time, those allegations now considered by both the Courts below deserves no further adjudication. However, the fact remains that the marriage was solemnized on 16.06.1999 and the girl child is also now aged about 20 years. The appellant and the respondent are living separately for the past about 15



years. Even now, there is no scope for resumption of matrimonial home. Both the appellant and the respondent were present before this Court. This Court also made an attempt whether there is a possibility of reunion-. Both the parties are adamant and there is no idea of re-union either by the appellant or by the respondent. Contrarily, the respondent is interested in claiming more maintenance from the appellant. Undoubtedly, she is entitled for maintenance, for which, the learned counsel appearing for the respondent states that the petition for maintenance is already pending. The respondent is at liberty to pursue the petition for claiming maintenance.

8. As far as the present appeal is concerned, when the appellant and the respondent are not living together for the past about 15 years, there is no scope for re-union even at this point of time. The ground of desertion during the relevant point of time was 1 ½ years and now desertion between the parties is about 15 years. Beyond this, the order of restitution passed by the First Appellate Court was not implemented. Non-implementation of the decree of restitution is also a ground for divorce. This Court finds that the allegations become lapsed after 15 years. Even after separation of 15 years, the parties have no intention to live together. The ground of desertion is also continuous for more than 15 years. The restitution of order passed by the First Appellate Court is also not honoured by the parties. This being the factum, this Court has to arrive a conclusion that the marriage become irretrievably broke down and there is no scope for further any resumption. Accordingly, the appellant is entitled for the decree of divorce both on the ground of desertion and on the ground that the restitution of conjugal rights ordered by the First Appellate Court has not been honoured by the parties.

9. Accordingly, the common judgment and decree dated 09.10.2012 passed in C.M.A.Nos.41 and 43 of 2008 reversing the common judgment dated 14.03.2008 passed in H.M.O.P.Nos.44 and 97 of 2005 are set aside and consequently, the Civil Miscellaneous Second appeals stand allowed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssb



To

1. The District Judge,
Tiruvarur.

2. The Sub-ordinate Judge,
Tiruvarur.

Copy To
The Section Officer,
VR Section, High Court,
Madras-104.

+2cc to Mr.A.Ganesan, Advocate, S.R.No.10344

+2cc to Mr.M.Thamizhavel, Advocate, S.R.No.10407, 10408

C.M.S.A.Nos.18 & 19 of 2013

VSNII (CO)
CS/22/09/2021