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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.2 of 2013

N.Chinnusamy

...Appellant / Respondent /
Petitioner

Vs.

Palaniammal

...Respondent / Appellant /
Respondent

Prayer : Civil Miscellaneous Second Appeal filed under Order 43 Rule 1 & 2 of C.P.C. r/w. Section 100 of C.P.C., against the judgment and decree dated 01.08.2012 made in C.M.A.No.1 of 2012 passed by the Principal District Judge, Namakkal, Namakkal District reversing the judgment and decree dated 28.10.2011 made in H.M.O.P.No.131 of 2009 passed by the Subordinate Judge, Namakkal, Namakkal District.

For Appellant : Mr.V.Saravanan for
Mr.S.Senthilnathan

For Respondent : No appearance

J U D G M E N T

The judgment and decree dated 01.08.2012 made in C.M.A.No.1 of 2012, reversing the judgment and decree dated 28.10.2011 made in H.M.O.P.No.131 of 2009, is under challenge in the present civil miscellaneous second appeal.

2. The substantial question of law raised in the appeal on hand is that whether the first Appellate Court is right in reversing the decree of divorce granted by the Trial Court despite the admitted fact that the appellant and the respondent are living separately for several years.



3. The marriage between the petitioner and the respondent was solemnized on 29.10.1969, as per the Hindu Rites and Customs. On account of difference of opinion, the spouses left the matrimonial home and living separately for about 16 years. The appellant filed H.M.O.P.No.131 of 2009, for dissolution of marriage. The Trial Court granted divorce and the respondent wife preferred C.M.A.No.1 of 2012. The first Appellate Court reversed the decree and dismissed the petition for divorce.

4. The learned counsel appearing on behalf of the appellant mainly contended that the respondent deserted the appellant and the desertion was admitted even before the Trial Court. When the parties are living separately for more than 16 years, that itself is sufficient to grant the decree of divorce in favour of the appellant. It is contended that since the appellant is now aged about 76 years, there is no possibility of reunion.

5. The very fact that the parties are living separately for more than 16 years and there is no possibility of reunion, this Court is of the opinion that the appellant is entitled to get divorce on the ground of desertion itself.

6. In this view of the matter, the judgment and decree dated 01.08.2012 passed in C.M.A.No.1 of 2012, reversing the judgment and decree dated 28.10.2011 passed in H.M.O.P.No.131 of 2009 is set aside and the decree and judgment passed in H.M.O.P.No.131 of 2009 dated 28.10.2011 stands restored. Accordingly, C.M.S.A.No.2 of 2013 stands allowed. No costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

gsk

To

1.The Principal District Judge, Namakkal,
Namakkal District.



2.The Subordinate Judge, Namakkal,
Namakkal District.

+1cc to M/s.S.Senthil Nathan, Advocate SR.No.7045

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RR(CO)
RVM(30/09/2021)