



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2021

CORAM

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

C.M.S.A.No.31 of 2013

Rani

...Appellant

Vs.

R.Varadharajan

...Respondent

Prayer: Civil Miscellaneous Second Appeal filed under Section 28 (1) Hindu Marriage Act r/w. Section 100 of C.P.C., against the judgment and decree dated 01.04.2013 made in C.M.A.No.21 of 2012 on the file of the Principal District and Sessions Court, Namakkal, confirming the judgment and decree dated 17.07.2012 made in H.M.O.P.No.73 of 2008, on the file of the Sub Court, Tiruchengode.

For Appellant : Mr.N.Manokaran

For Respondent : Mr.V.S.Kesavan

J U D G M E N T

The judgment and decree dated 01.04.2013 made in C.M.A.No.21 of 2012, confirming the judgment and decree dated 17.07.2012 made in H.M.O.P.No.73 of 2008, is under challenge in the present civil miscellaneous second appeal.

2. The marriage between the appellant and the respondent was solemnized during the year 1981. Two children born from and out of the wedlock between the appellant and the respondent. During the year 2001, marriage of the first daughter was solemnized. From the year 2003 onwards, the appellant and the respondent are living separately and the daughters have filed O.S.No.1182 of 2004 before the District Munsif Court, Tiruchengode, for partition of the properties. The second daughter also got married in the year 2006. Thereafter, the respondent husband issued a legal notice on 02.04.2007 (Ex.P3) to the appellant wife. Consequently, the respondent husband filed H.M.O.P.No.73 of 2008 for dissolution of marriage on the ground of cruelty and desertion.



3. Based on the deposition of the husband as P.W.1 and with reference to the documents marked in Ex P1 to P5 and relying on the deposition of the wife who was examined as R.W.1, the Trial Court adjudicated the issues and granted decree of divorce mainly on the ground that the wife has removed the mangalsutra on her own during the lifetime of her husband. The wife has given a police complaint against the respondent as if the mangalsutra was stolen by her husband. The wife has suggested an illicit relationship between the respondent and one Chitra without any pleadings. Finally, the Trial Court relied on a ground that the marriage has been irretrievably broken down and passed the decree of divorce. Challenging the same, the appellant wife filed an appeal in C.M.A.No.21 of 2012, before the Principal District Judge, Namakkal and the first Appellate Court also confirmed the judgment and decree passed by the Trial Court on 01.04.2013. Thus, the present second appeal is filed.

4. The questions of law raised in the present second appeal are as follows:

a. Whether the Courts below have committed an error in granting divorce on the ground of cruelty and desertion by treating them as an ideal husband and ideal wife instead of considering the social strata of the parties, their ways of life, relationship, temperament and emotions that they have been conditioned by their social status?

b. Whether the Courts below are right in holding that the appellant is guilty of desertion in the absence of any evidence to prove the factum of separation and the intention to bring cohabitation permanently to an end, and that the husband who was at fault cannot be allowed to take advantage of his own wrong?

c. Whether the Courts below are right in holding that the appellant has treated the respondent with cruelty in the absence of any legal evidence to prove the allegation of the cruelty committed by the appellant /wife?

5. The questions of law raised by the appellant are relatable to the factual findings of the Trial Court as well as by the first Appellate Court which deserves no further adjudication by this Court in the present civil miscellaneous second appeal. The facts adjudicated and concluded both by the Trial Court and the first Appellate Court need not be gone into at the stage of second appeal and therefore, the substantial questions of law are unacceptable and not in consonance with the principles regarding the substantial question of law with reference to Section 100 of C.P.C. Even factually, the appellant



and the respondent are living separately for more than 17 years. Therefore, the marriage has become irretrievably broken down and there is no possibility of reunion or otherwise. This apart, the respondent is aged about 64 years.

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6. Under these circumstances, this Court do not find any acceptable ground for the purpose of interfering with the concurrent findings of the Trial Court as well as the first Appellate Court. Consequently, the judgment and decree dated 01.04.2013 passed in C.M.A.No.21 of 2012, confirming the judgment and decree dated 17.07.2012 passed in H.M.O.P.No.73 of 2008, stands confirmed and C.M.S.A.No.31 of 2013 stands dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsk

To

1. The Principal District and Sessions Court,
Namakkal.

2. The Sub Court, Tiruchengode.

COPY TO:

The Section Officer,
VR Section,
High Court, Chennai 104.

+1 CC to Mr.N.Manokaran, Advocate, Sr.No. 6936.

C.M.S.A.No.31 of 2013

PP(CO)
LS(24/08/2021)