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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.S.A.No.19 of 2016

C.Thirunavukarasu

.. Appellant/ Petitioner
Vs.

K.Vathsala

.. Respondent/ Respondent

PRAYER This Civil Miscellaneous Second Appeal is filed under Section 28 of Hindu Marriage Act, R/w 100 of C.P.C., against the order of the Hon'ble Principal District Court at Cuddalore dated 25.08.2015 in C.M.A.No.30 of 2013, confirming the order of the Hon'ble Principal Subordinate Court dated 25.02.2013 in H.M.O.P.No.58 of 2009.

For Appellant : Mr.N.Selvaraju

For Respondent : Mr.Vedhavel
For M/s.V.Sarathadevi

JUDGMENT

The Civil Miscellaneous Second Appeal is preferred against the order of the Hon'ble Principal District Court at Cuddalore dated 25.08.2015 in C.M.A.No.30 of 2013, confirming the order of the Hon'ble Principal Subordinate Court dated 25.02.2013 in H.M.O.P.No.58 of 2009.

2. Perusal of the Substantial questions of law raised in the present Civil Miscellaneous Second Appeal, all relatable to facts and circumstances. There is no acceptable substantial question of law raised in the present appeal, enabling this Court to adjudicate the entire issues raised. In the absence of any substantial question of law, the second appeal cannot be entertained under Section 100 of C.P.C.

3. The facts in nutshell reveals that the marriage between the appellant and the respondent was solemnized on 10.07.1989 as per the Hindu Rites and Customs at Chidambaram. On account of certain disputes, the appellant and the respondent left the Matrimonial home and living separately. Even now, they are living separately for about 12 years. The appellant/husband filed a petition under the Hindu Marriage Act, seeking Dissolution of Marriage.

4. The trial Court dismissed the petition on the ground that the appellant had not established allegations of cruelty



against the respondent/wife. The appellant/husband further filed an appeal in C.M.A.No.30 of 2013 and the First Appellate Court also dismissed the appeal by confirming the judgment and decree passed by the Trial Court.

5. The findings of the First Appellate Court in Paragraph 12 of the judgment is relevant, which reads as follows:

"12. With regard to the ground of cruelty for divorce under Section 13(i) (ia) of the Hindu Marriage Act, 1955, it is to state that the Petitioner has pleaded that even from the date of marriage the respondent was not honest and sincere to the petitioner. She used to pick up quarrel with the petitioner on some ground or other and used to run away from the house often. She used to stay out for days together and return as when she liked. Whenever the petitioner questioned her, she used to shout saying that "I will be only like that, and you can't question me". The petitioner had a suspicion about her character, because she used to move freely with men and used to be away for days together and used return as when and liked. Two sons were born to the respondent. Despite all he misdeeds, the petitioner was patient even though he had suspicion about for way of life and her character. The respondent was unemployed at the time of marriage. He only got her job in the year 2006 for which also he spent huge amount. He also spent some amount for her placement. The petitioner came to know that one Radhakrishnan, who is her elder sister's husband used to meet her in privacy and was moving closely with her. The petitioner also came to know that his illicit movement with the respondent was there even prior to his marriage with her and it continues even after the marriage. At last, on 9th April 2008, she picked up quarrel with this petitioner. She had poisoned the mind of her son Vasanth, who went to the extent of assaulting the petitioner. The respondent also joined her son in assaulting the petitioner. This was witnessed by a lady, who is the owner of the house in the opposite side. The petitioner attempted to advice her through one Parameswaran, Radhakrishnan and one Kumar of the same locality. But, the respondent was not willing for any talk. She had left the house with her children. In order to prove his case, the petitioner has let in oral evidence as P.W.1 as found in his petition. It is to state that the burden is on the person, who states that he was subjected to cruelty by the other party. Though, the petitioner has stated that on 9.4.2008, the respondent has quarrelled with him, assaulted him with her son; Vasanth and the same was witnessed by a lady, who is the owner of the opposite house and he had attempted to advice the respondent through one Parameswaran, Radhakrishnan and one Kumar of the same locality, he



has not chosen to examine either one of them to prove the acts of cruelty. Hence, adverse inference under Section 114(g) of the Indian Evidence Act can be drawn against the petitioner."

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6. This Court is of the considered opinion that in the absence of any substantial question of law, the finding of the trial Court as well as the First Appellate Court cannot be interfered with by this Court. The findings of the First Appellate Court is also candid and convincing and the facts and circumstances with reference to the grounds raised were adjudicated elaborately. The contention of the learned counsel for the appellant that further documents are available cannot be considered at this stage. Even in case, an additional document is to be filed, the said exercise is to be done before the First Appellate Court at least and in a Second Appeal stage, this Court cannot entertain any such ground seeking permission to file an additional document for the purpose of further examination or re-examination of witnesses. Such course of action is impermissible and in the absence of any substantial question of law, the question does not arise at all.

7. Apart from all these facts, the appellant and the respondent are living separately for the past more than 12 years. Thus, the marriage became irretrievably break down and under these circumstances, there is no other acceptable reason for the purpose of re-considering the settled findings by both the Courts.

8. Accordingly, the judgment and decree dated 25.08.2015 passed in C.M.A.No.30 of 2013, confirming the order of the Hon'ble Principal Subordinate Court dated 25.02.2013 in H.M.O.P.No.58 of 2009 stands confirmed and the appeal stands dismissed. No costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Kak

To

- 1.The Judge, Principal District Court, Cuddalore
- 2.The Principal Subordinate Judge, Cuddalore.

Copy to:

The Section Officer,

VR Section, High Court, Madras.

+1cc to M/s.V.Sarathadevi, Advocate SR.No. 7568

+1cc to Mr.N.Selvaraju, Advocate SR.No. 7039

C.M.S.A.No.19 of 2016

CA (CO)

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A.SK(08.09.2021)