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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.03.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

A.S. No.509 of 2020 and C.M.P. No.6936 of 2020

K.Madhalai Arokiyasamy

...Appellant/Plaintiff

-vs-

M.Cecili Rani

...Respondent/Defendant

Prayer: Appeal Suit filed under Section 96 of Civil Procedure Code to set aside the judgment and decree dated 18.12.2019 in Original Suit No.40 of 2017 on the file of the Additional District Judge, Dharmapuri.

For Appellant : Mr.R.Selvakumar

For Respondent : Mr.Sakkarapani

JUDGMENT

(Judgment of the Court was made by T.RAJA,J.)

This appeal has been directed against the impugned judgment and decree dated 18.12.2019 passed by the learned Additional District Judge, Dharmapuri in Original Suit No.40 of 2017, dismissing the suit for partition on the preliminary issues and raising the maintainability of the suit.

2.Learned counsel appearing for the appellant submitted that after solemnisation of marriage between the appellant and the respondent on 18.10.1999, a male child was born on 16.10.2007. Out of the un-limited love and affection on her wife, the appellant purchased a property in the name of the respondent using his own salary. Thereafter, due to some matrimonial disputes occurred between them, the respondent left the matrimonial home on 17.12.2011. Therefore, the appellant filed a petition in I.D.O.P. No.3 of 2012 seeking dissolution of marriage on the ground of cruelty and desertion and the same was re-numbered as F.C.I.D.O.P. No.1 of 2014 and dismissed vide order dated 22.06.2015. Learned counsel appearing for the



appellant further submitted that as against the dismissal, when the appellant has filed an appeal in C.M.A. No.2811 of 2016, this Court, by order dated 26.02.2021, allowed the appeal by granting divorce. Learned counsel appearing for the appellant further submitted that since the respondent has taken steps to grab the property, the appellant filed a suit for partition and permanent injunction in O.S. No.40 of 2017 before the learned Additional District Judge, Dharmapuri on the basis of 12 documents. As it is a rudimentary principle that the Trial Court could allow the parties to mark the necessary documents, learned Additional District Judge, Dharmapuri, without even framing any issues, on merits, has miserably failed to mark those documents produced by the appellant and dismissed the suit.

3.Opposing the above prayer, learned counsel appearing for the respondent submitted that this Court can also look into those documents, while disposing of the matter.

4.Since the suit is of the year 2017, instead of summoning all those documents from the Trial Court, we are inclined to dispose of the matter by remanding the matter back to the Trial Court, considering the prevailing pandemic situation due to Covid-19 as it would also create more difficulty to the parties in arriving from Dharmapuri to Chennai. Accordingly, the impugned judgment and decree passed by the Trial Court are set aside and the matter is remanded back to the Trial Court for fresh consideration. The Trial Court is directed to take up the matter, on priority basis and dispose of the same, on the basis of oral and documentary evidence filed by the parties, preferably within a period of six months from the date of receipt of a copy of this order, on merits and in accordance with law. Both the parties are permitted to file necessary documents, if any.

5.With the above direction and observation, the appeal stands disposed of. Consequently, C.M.P. No.6936 of 2020 is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vga



To

1. The Additional District Judge,
Dharmapuri.

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+1 CC to Mr.R.Selva Kumar, Advocate, Sr.No. 18049.

A.S. No.509 of 2020 and C.M.P. No.6936 of 2020

RLD (CO)
LS (28/09/2021)