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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.S.A.No.13 of 2017

Thiru.Sundarapandiyam ..Appellant/Appellant/Petitioner

Vs.

Tmt.Vimala

..Respondent/Respondent/Respondent

Prayer : Civil Miscellaneous Second Appeal filed under Section 28 of Hindu Marriage Act, Read with Section 100 of C.P.C., against the order passed in C.M.A.No.2 of 2015 dated 04.11.2015 by the Learned District Judge, Thiruvannamalai by confirming the order in H.M.O.P.No.69 of 2011 dated 18.12.2014 by the Learned Subordinate Judge, Arni.

For Appellant : Mr.R.Surya Prakash
For Mr.B.Gopalakrishnan

For Respondent : M/s.V.Divia Bharathi

J U D G M E N T

The judgment and decree dated 04.11.2015 passed in C.M.A.No.2 of 2015, confirming the judgment and decree dated 18.12.2014 passed in H.M.O.P.No.69 of 2011 is under challenge in the present Civil Miscellaneous Second Appeal.

2. The appellant is the husband and the respondent is his wife. The marriage between the petitioner and the respondent was solemnized on 10.09.2008 as per the Hindu Rites and Customs.

3. The appellant filed a petition for Dissolution of marriage and the petition was defended by the respondent/wife and the trial Court adjudicated the issues. The trial Court formed an opinion that the allegations of cruelty raised by the appellant/husband was not established. The child born from and out of the wedlock and thereafter, a difference of opinion arose.

4. The allegations raised against the respondent/wife was that she was frequently going to her mother's house and staying



there for months together and further, she is scolding the appellant / husband. These allegations are found to be flimsy and the trial Court formed an opinion that a female child born from and out of the wedlock and the appellant and the respondent cannot file a petition for divorced based on such flimsy and baseless allegations. The trial Court considered that the future of the female child also will get affected and under those circumstances, the trial Court dismissed the petition for Dissolution of Marriage.

5. The appellant filed an appeal in C.M.A.No.2 of 2015 and the trial Court independently adjudicated the issues as well as the evidences and the findings of the trial Court. The First Appellate Court considered the depositions of the witnesses, more specifically, the evidence of P.W.1 at the time of cross examination was also considered by the First Appellate Court. Based on the evidence, the First Appellate Court held that where the evidence adduced in support of the petitioner's case is scanty and it is not sufficient to prove the allegation made by the petitioner, decree for dissolution of marriage cannot be granted. The First Appellate Court found that the proposition of law stated above would be applicable to the case of the appellant and the respondent. The evidence of the respondent/wife was cogent and clear. Thus, the First Appellate Court also concurred with the findings of the trial Court and dismissed the appeal.

6. The Substantial Question of Law raised in the present appeal reads as under:

"(i) Whether both the Courts below rightly held that the petitioner/husband has not make out any case for getting the relief of divorce on the ground of cruelty?

(ii) Whether both the Courts below rightly appreciated Ex.A2 and A3 which stood as a documentary proof that mental cruelty was committed by the respondent/wife?

(iii) Whether both the courts below right in holding that the petitioner/husband is not entitled for the decree of divorce on the ground of cruelty?"

7. The substantial question of law raised by the appellant are relatable to the facts and circumstances, more specifically, with reference to the allegations of cruelty. However, both the trial Court as well as the First Appellate Court elaborately adjudicated the facts, circumstances with reference to the evidences and made a clear finding and therefore, the facts adjudicated need not be re-considered in the present Second Appeal.



8. Thus, the appellant has not raised any acceptable Substantial question of law, warranting further adjudication of interference from the hand of this Court. Accordingly, the judgment and decree dated 04.11.2015 passed in C.M.A.No.2 of 2015, confirming the judgment and decree dated 18.12.2014 passed in H.M.O.P.No.69 of 2011 stands confirmed and consequently, the Civil Miscellaneous Second Appeal in C.M.S.A.No.13 of 2017 is dismissed. No costs.

-s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

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To

1. The District Judge, Thiruvannamalai

2. The Subordinate Judge, Arni.

+1 CC to Mr.B.Gopalakrishnan, Advocate sr 19412.

C.M.S.A.No.13 of 2017

RSV(CO)
SP(11/08/2021)