



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2021

CORAM

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

C.M.S.A.NO.9 OF 2017

AND

C.M.P.NOS.3257 OF 2017 & 5389 OF 2018

V.Shankar

.. Appellant/Appellant/
Petitioner

..Vs..

S.Dhanalakshmi

.. Respondent/Respondent/
Respondent

Prayer :

Civil Miscellaneous Second Appeal filed under Section 28 of Hindu Marriage Act, praying to set aside the fair order and judgment and decree dated 08.06.2016 made in C.M.A.No.2 of 2013 on the file of Hon'ble Additional District Court, Hosur, confirming the fair order and judgment and decree dated 07.12.2012 made in H.M.O.P.No.74 of 2009 on the file of Hon'ble Subordinate Court, Hosur.

For Appellant : M/s.K.Gandhi Kumar

For Respondent : Mr.C.Prabakaran

J U D G M E N T

The parties to the lis on hand compromised this Court and accordingly, entered into a memorandum of understanding and both the parties, who are present before this Court expressed consent for dissolution of their marriage.

2. In view of the fact that the appellant and the respondent had extended their consent for dissolution of marriage, the appeal is to be disposed of. The memorandum of understanding between the parties is extracted hereunder:

"THIS MEMORANDUM OF UNDERSTANDING IS MADE AND EXECUTED ON THIS THE 11th DAY OF FEBRUARY, 2021 AT KEELAMANGALAM BETWEEN



WEB COPY

V.SHANKAR, S/o. Venkatesamy, Hindu aged 49 years, residing at No.1/50, Sri Virupakshwaraswamy Temple Street, Denkanokotta Main Road, Kelamangalam Town & Post, Denkanikotta Taluk, Krishnagiri District hereinafter referred to as PARTY OF THE FIRST PART

AND

S. DHANALAKSHMI, W/o. V.Shankar, Hindu aged 36 years residing at No.113.Chinnatti Village, Kelamangalam Town & Post, Denkanikotta Taluk, Krishnagiri District hereinafter referred to as PARTY OF THE SECOND PART

WHEREAS the marriage between THE PARTY OF THE FIRST PART and PARTY OF THE SECOND PART took place on 21-05-2004 at K.A.P. Kalyana Mandapam, Hosur as per Hindu Custom and rites. Whereas Misunderstand took place between the PARTY OF THE FIRST PART and the PARTY OF THE SECOND PART. Hence the party of the first part filed Divorce Petition before the Sub Ordinate Court, Hosur in H.M.O.P.No.74 of 2009 on the ground of cruelty, under Section 13(1)(ia) of Hindu Marriage Act- 1955, to dissolve the marriage between them by grant of decree of divorce. After the trial, the trial court dismissed the above H.M.O.P.No.74 of 2009 on 07-12-2012. After dismissal of the divorce petition filed by the first party, the part of 2nd party filed a petition for restitution of Conjugal rights before the Sub Ordinate Court, Hosur in H.M.O.P.No.25 of 2013 ie after lapse of 8 years from 2005. The said H.M.O.P.No.25 of 2013 has been decreed on 10-04-2017. Further the first part filed a C.M.A.No.2 of 2013 against the dismissal of H.M.O.P.No.74 of 2009 and on 08-06-2016 the Hon'ble Additional District Judge, Hosur dismissed the CMA 2 of 2013. Aggrieved the same the first part herein has preferred the above CMSA 9 of 2017.

Whereas when CMSA.No. 9 of 2017 came up for final disposal, on the instructions of 1st and 2nd part and also their consent, the Hon'ble High Court, Madras passed order in presence of the both parties and their counsels that the party of the first part has to pay full and final settlement of sum of Rs.35,00,000/- (Rupees Thirty-Five Lakhs Only) to the part of 2nd party and daughter, towards permanent alimony. The 2nd party also agreed the same and given consent for divorce.

AND WHEREAS both the parties hereto have decided to settle the cases amicably and have arrived at a settlement in terms of final Compromise Memorandum of Understanding.



NOW THIS MEMORANDUM OF UNDERSTANDING WITNESS AS FOLLOWS:
WHEREAS the final compromise Memorandum of Understanding shall come into force only on compliance of the following terms and conditions:

WEB COPY

1. The PARTY OF THE FIRST PART agreed to pay sum of Rs.35,00,000/- (thirty five lakhs only) to the PARTY OF THE SECOND PART and also to daughter namely VARALAKSHMI (Who is mentally disorder person) for full and final settlement of the issue. As per the court order the party of the first part deposited Rs.12,00,000/- (Rupees Twelve lakhs) in the account of the party of the second part and the same was observed in the Hon'ble High Court order dated 21-11-2019.
2. THE PARTY OF THE SECOND PART agreed to receive her daughter's share sum of Rs.15,00,000/- (Rupees Fifteen Lakhs) from THE PARTY OF THE FIRST PART by way of fixed deposit. So the party of first part deposited sum of Rs. 15,00,000/- (Rupees Fifteen Lakhs) in her daughter VARALAKSHMI @ LAKSHMI PRIYA's account as fixed deposit in SYNDICATE BANK (CANARA BANK), Hosur Branch, DEPOSIT BOND No.SBP-083038 (Account No.61704040004799/1). Further the party of the second part agreed to be a guardian, entitle to receive interest alone, that too for the welfare of the child as well as the medical expenses till her life time and after that Second Party is entitled to withdraw the amount of Rs.15,00,00/- (Rupees Fifteen Lakhs).
3. Today the PARTY OF THE FIRST PART paid Rs.2,00,000/- (Rupees Two Lakhs) as a cash and sum of Rs.6,00,000/- (Rupees Six Lakhs) as Demand Draft No.765537 dated 04.02.2021, issued by CANARA Bank, Hosur Branch, PARTY OF THE SECOND PART received and duly acknowledge the same.
4. The PARTY OF THE SECOND PART and on behalf of daughter VARALAKSHMI (Who is mentally disorder person) agreed to relinquish all their rights over the PARTY OF THE FIRST PART and they will not claim any manner over property or assets hereafter.
5. THE PARTY OF THE SECOND PART agreed to give consent for divorce to THE PARTY OF THE FIRST PART and given consent to dissolve the marriage took place on 21-05-2004 at K.A.P. Kalyana Mandapam, Hosur between the PARTY OF THE FIRST PART and the PARTY



WEB COPY

OF THE SECOND PART. Further both Parties agreed that they will not interfere in any way in the future life of each one. The 1st and 2nd Parties have agreed that they will not claim or sue for any property or money as against each other for the past, present and future life. The Second Party withdraw all the Civil and Criminal Cases including in REP 167/2018, in IA 49/2013, MOP 25/13, for recovery of money, interim maintenance filed in Sub-Court, Hosur.

6. The PARTY OF THE SECOND PART agreed that since her daughter VARALAKSHMI is in her custody from the date of birth, she will maintain her daughter till her life time and also, she agrees that she will not hand over her daughter to first part at any circumstances. Further she will not claim or sue against the PARTY OF THE FIRST PART on behalf of her daughter on the basis of the relationship.
7. BOTH THE PARTIES shall scrupulously comply the terms and conditions of this final Compromise Memorandum of Undertaking.
8. In the event of default of any of the terms and conditions of this final compromise Memorandum of Understanding by any of the parties herein, they shall resolve their issues through court of law.

IN WITNESS THEREOF the parties have set hand and signed this Memorandum of Understanding on the date, month and year above mentioned."

3. In view of the memorandum of understanding, the marriage between the appellant and the respondent stands null. The marriage solemnized on 21.05.2004 is dissolved. Accordingly, decree of divorce is granted. The judgment and decree dated 08.06.2016 passed in C.M.A.No.2 of 2013 confirming the judgment and decree dated 07.12.2012 passed in H.M.O.P.No.74 of 2009 are set aside. Consequently, C.M.S.A.No.9 of 2017 stands allowed. No costs. Connected civil miscellaneous petitions are closed.

4. The memorandum of understanding is to be treated as part and parcel of the decree to be drawn by the Registry.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

Pns



To

1. The Additional District Judge,
Hosur.

2. The Subordinate Judge,
Hosur.

+1cc to M/s.K.Gandhi Kumar, Advocate, S.R.No.8358

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.8326

C.M.S.A.No.9 of 2017

RR(CO)
CS/11/10/2021
CS/12/10/2021