



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.S.A. (MD) .No.33 of 2011

and

M.P. (MD) .No.2 of 2011

R.Renugadevi

... Appellant/Respondent

Vs.

M.Rajangam

... Respondent/Petitioner

PRAYER: Civil Miscellaneous Second Appeal is filed under Section 28 of the Hindu Marriage Act/ r/w. Section 100 of C.P.C., against the judgment and decree passed in H.M.C.M.A.No.5 of 2005 on the file of the Principal District Judge, Srivilliputhur dated 31.10.2006, reversing the judgment and decree in H.M.O.P.No.47 of 2002 on the file of the Subordinate Judge, Aruppukottai, dated 01.11.2004.

For Appellant : Mr.NA.Palaniyandi

For Respondent : Mr.M.Thirunavukkarasu

J U D G M E N T

The Civil Miscellaneous Second Appeal has been filed against the judgment and decree passed in H.M.C.M.A.No.5 of 2005 on the file of the Principal District Judge, Srivilliputhur dated 31.10.2006, reversing the judgment and decree passed in H.M.O.P.No.47 of 2002 on the file of the Subordinate Judge, Aruppukottai, dated 01.11.2004.

2. The respondent/husband filed H.M.O.P.No.47 of 2002 for divorce before the Sub Court, Aruppukottai, on the ground of cruelty, desertion and adultery. The said H.M.O.P. was dismissed by the learned Subordinate Judge, Aruppukottai, on 01.11.2004. Against which, the respondent/husband filed H.M.C.M.A.No.5 of 2005 before the learned Principal District Judge, Srivilliputhur, which was allowed on 31.10.2006, on the ground of desertion alone.



3. The learned Principal District Judge, Srivilliputhur in his judgment dated 31.10.2006 in H.M.C.M.A.No.5 of 2005 stated that both the appellant as well as the respondent separated from the year 1988. The learned counsel for the appellant also admitted the fact that they are separated from long back and there is no possibility of re-union. Since both the parties are living separately from the year 1988, the learned Principal District Judge, Srivilliputhur has rightly allowed the appeal. This Court, in the case of **Anandakrishnan vs. Pushpalatha** reported in (2021 (5) CTC 524) has held as follows:

"As far as the present appeal is concerned, when the Appellant and the Respondent are not living together for the past about 15 years, there is no scope for re-union even at this point of time. The ground of Desertion during the relevant point of time was 1 ½ years and now desertion between the parties is about 15 years. Beyond this, the order of restitution passed by the First Appellate Court was not implemented. Non-implementation of the Decree of Restitution is also a ground for Divorce. This Court finds that the allegations become lapsed after 15 years. Even after separation of 15 years, the parties have no intention to live together. The ground of Desertion is also continuous for more than 15 years. The restitution Order passed by the First Appellate Court is also not honoured by the parties. This being the factum, this Court has to arrive a conclusion that the marriage become irretrievably broke down and there is no scope for further any resumption. Accordingly, the appellant is entitled for the Decree of Divorce both on the ground of Desertion and on the ground that the Restitution of Conjugal Rights ordered by the First Appellate Court has not been honoured by the parties."

4. In the result, the Civil Miscellaneous Second Appeal is dismissed, by confirming the judgment and decree passed by the learned Principal District Judge, Srivilliputhur in H.M.C.M.A.No.5 of 2005, dated 31.10.2006. No costs. Consequently, the connected Miscellaneous Petition is closed.

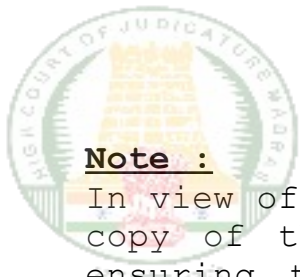
Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)



Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

- 1.The Principal District Judge,
Srivilliputhur.
- 2.The Subordinate Judge,
Aruppukottai.
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M.THIRUNAVUKKARASU, Advocate (SR-37637[F] dated 07/12/2021)

+1 CC to M/s.NA.PALANIYANDI, Advocate (SR-37672[F] dated 07/12/2021)

C.M.S.A. (MD) .No.33 of 2011
07.12.2021

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