



CMSA(MD).No.23 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.04.2021

PRONOUNCED ON : 07.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMSA(MD).No.23 of 2010

(Through Video Conferencing)

R.Suresh

Appellant

Vs

Rajeswari

Respondent

Prayer:- This Civil Miscellaneous Second Appeal has been filed, under Section 28 of the Hindu Marriage Act read with Section 100 of CPC, against the judgement and decree, dated, 15.12.2009, passed in CMA.No.26 of 2009, by the Principal District Judge, Trichy, confirming the judgement and decree, dated, 23.10.2008, passed in HMOP.No.3 of 1997, by the Principal Sub Judge , Trichy.

For Appellant : Mr.M.Siddharthan

For Respondent : Mr.G.Sankara Narayanan

ORDER

1. This Civil Miscellaneous Second Appeal has been filed, against the judgement and decree, dated, 15.12.2009, passed in CMA.No.26 of 2009, by the Principal District Judge, Trichy, confirming the judgement and decree, dated, 23.10.2008, passed in HMOP.No.3 of 1997, by the Principal Sub Judge, Trichy.

2. The case of the Appellant as set out in the HMOP is that the Respondent



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herein is his wife and their marriage took place on 28.08.1987 according to Hindu Rites and Customs and out of the wedlock, a female child was born to them in February 1991 and she often used to go to her mother's place and stay there for a long time and she did not behave as a dutiful and affectionate wife. Even when he was bedridden due to a road accident on 16.8.1989, she did not come to see him. On 26.5.1993, the Respondent without the knowledge of the Appellant, she left the matrimonial home with the child, with jewels and other belongings. The attempts of the Appellant to bring the Respondent back to the matrimonial home ended in vein. On 07.11.1996, the Respondent gave a false complaint against the him and the Police treated him disrespectfully. Thus, the Respondent deserted the Appellant and caused mental cruelty to him. Hence, the HMOP has been filed, for dissolution of the marriage.

3. The case of the Respondent, as set out in the counter filed in the HMOP is that the Petitioner did not take care of her and the child and he was having illicit intimacy with one Kala and they begot a child on 21.10.1993 and only on coming to know about the same, she gave the complaint and the said Kala also gave a statement and that the Respondent apprehending danger to her life, she has been living separately and she did not desert the Petitioner, but she was driven out of the home by the Appellant and prayed for dismissal of the HMOP.
4. Before the Trial Court, on the side of the wife, Ex.P1 to Ex.P7 were marked and PW.1 to PW.3 were examined and on the side of the husband, he



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examined himself as PW.1. After analysing the evidence both oral and documentary, the Trial Court had dismissed the HMOP and the appeal filed as against the same, was also dismissed, dismissing the HMOP. Hence, this Civil Miscellaneous Second Appeal has been filed by the husband.

5. This Civil Miscellaneous Second Appeal was admitted, on the following substantial questions of law:-

- (a) Whether the courts below are correct in holding that there is no cruelty and desertion on the part of the Respondent?
- (b) Whether the first appellate court is correct in dismissing the appeal when it categorically disbelieved the oral as well documentary evidence of the Respondent?
- (c) Whether the courts below are correct in holding that the irretrievable break down of marriage is not a ground for divorce?

6. The learned counsel for the Appellant has submitted that the courts below erred in appreciating the fact that there is no scope for reunion between the spouses, since they were living separately from 1993 and when the Respondent has willfully and wantonly living away from the Appellant right from the year 1993 and the matrimonial relationship between them was irretrievably broken down. The learned counsel has further submitted that Respondent has never stated that she is willing for reunion and that the Appellant has proved that the Respondent has committed cruelty and desertion by valid evidence and that they themselves mutually entered into a compromise deed and that no purpose would be served in keeping the matrimonial bond alive after lapse of more than two decades and in such circumstances, prayed for allowing of this Civil Miscellaneous Second



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Appeal.

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7. On the other hand, the learned counsel for the Respondent would submit that the Appellant was living with another lady and he used to demand money frequently, by harassing her and also used to treat her cruelly and she was driven out of the matrimonial home and it is the Appellant who deserted her.
8. This Court considered submissions of the learned counsel on either side and also perused the materials available on record, including the impugned judgements.
9. Admittedly, the marriage took place between the parties on 28.8.1987 and out of their wedlock, a female child was born to them. It is alleged that the Respondent left the matrimonial home in 1993 without his knowledge. There are allegations and counter allegations against each other. The Trial Court had dismissed the HMOP since the Appellant did not prove the grounds of cruelty and desertion by valid evidence. The lower appellate court also has concurrently held that the grounds of cruelty and desertion were not proved and accordingly, dismissed the appeal.
10. In this Civil Miscellaneous Second Appeal, subsequent events took place between the parties. An additional typed set of papers is filed by the Appellant.
11. Though the courts below held that there is no cruelty and desertion on the part of the Respondent and the irretrievable break down of marriage is not a ground for divorce, on which, the substantial questions of law are framed by



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this Court, in view of the subsequent events, now the core question that arises for consideration is as to whether there is any possibility for reunion between the parties at this distant point of time or not.

12.It is seen that the Appellant and the Respondent have entered into a compromise deed, dated 23.08.2016, in and by which, the Appellant had agreed to pay a sum of Rs.10,00,000/- to the Respondent and the child and also to give Rs.1,00,000/- towards final settlement and an advance amount of Rs.3,00,000/- was also paid to the Respondent on that day by way of a demand draft and for the remaining balance amount, two cheques were given to the Respondent and it was also agreed that on receipt of the balance amount by way of a Demand Draft, the said two cheques have to be returned and all the cases filed against him have to be withdrawn. However, when she attempted to encash the said cheques, the same were dishonoured, for which, she has initiated proceedings under Section 138 of the Negotiable Instruments Act against the Appellant. Thereafter, the Appellant had sent a legal notice, dated 10.07.2018, informing that the Appellant had called her to come and collect three demand drafts for a sum of Rs.7,00,000/- and to settle the cases.

13.Nowhere, the Respondent has whispered anything about the reunion and about her readiness and willingness to live with the Appellant nor she has filed any petition seeking restitution of conjugal rights. But, she has filed cases one after another. She has only stated that she apprehending danger to her life, she has been living separately. Entering into a such compromise



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deed would amount that they would not like to live with each other. In such circumstances, this Court is of the view that at this distant point of time, there is no possibility for reunion between the parties, particularly, that too when they themselves mutually entered into a comprise deed.

14. In fine, this Civil Miscellaneous Second Appeal is allowed and the marriage held on 28.08.1987 between the Appellant herein/ husband and the Respondent herein/wife is hereby dissolved on condition that the appellant shall adhere to the terms of the compromise deed and also honour the amount mentioned in the compromise deed with interest, within eight weeks from the date of receipt of a copy of this order, failing which, this appeal shall stand dismissed. No costs.

07.06.2021

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
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To

1. The Principal District Judge, Trichy
2. The Principal Sub Judge, Trichy
3. The Record Keeper, VR Section, Madurai Bench of Madras High Court, Madurai

Pre-Delivery Order in
SA(MD).No.23 of 2010