



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **01.07.2022**

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.S.A.No.24 of 2001

and

C.M.P.No.9822 of 2001

K.Rajasekaran

... Appellant

Vs.

Poongodi

... Respondent

PRAYER: Civil Miscellaneous Second Appeal filed under Section 28(1) of the Hindu Marriage Act (25 of 1955) r/w Section 100 of the Code of Civil Procedure, 1908 against the Judgment and Decree dated 22.12.2000 made in C.M.A.No.27 of 2000 on the file of the II Additional District Court, Erode reversing the Judgment and Decree dated 05.08.1999 made in H.M.O.P.No.38 of 1997 on the file of the Sub Court, Bhavani.

For Appellant : Mr.D.Sendhur Kugan
for Mr.A.Gokulakrishnan

For Respondent : Notice Served - No Appearance



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J U D G M E N T

The husband whose decree for divorce had been reversed by the Appellate Court, is the appellant before this Court.

2. The brief facts are as follows:

The appellant / husband has filed H.M.O.P.No.38 of 1997 on the file of the Sub-Court, Bhavani against the respondent seeking divorce on the ground of desertion. In his petition, he would state that the marriage between him and the respondent had been solemnized on 06.06.1993 as per the Hindu Caste Customs and rites. Both of them lived at the appellant's residence for over a year. However, on account of the influence of her maternal uncle, the respondent started insisting upon the appellant setting up a separate matrimonial home. Meanwhile, the respondent had conceived and she was taken to her parental home for ceremony. However, after the ceremony, the respondent refused to return to her matrimonial home and all the appellant's efforts to bring her back, went in vain. A girl child was born to the appellant and the respondent on 20.03.1995, which information also had reached the appellant only through third persons. The respondent and



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her parents did not allow the appellant and his parents to see the child.

Thereafter, the appellant had filed H.M.O.P.No.18 of 1995 under Section 9 of the Hindu Marriage Act against the respondent seeking restitution of conjugal rights. This petition, after full-fledged enquiry, was allowed by order dated 01.09.1996. Thereafter, the appellant had requested the respondent / wife to comply with the order of the Court and visited her home several times. Finally, in the last week of October, 1996, the appellant and some Panchayatars requested the respondent to come and live with the appellant, for which the respondent bluntly refused. Therefore, considering the fact that the respondent, without any reasonable cause, left the matrimonial home and had refused to comply with the orders of the Court granting restitution of conjugal rights, the appellant / husband had come forward with H.M.O.P.No.38 of 1997 for divorce.

3. The respondent had filed a counter *inter-alia* denying the allegations contained in the petition, but, however, she admitted the order passed in H.M.O.P.No.18 of 1995. She had made allegations against the appellant's parents. She would contend that she is willing to rejoin the appellant.



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4. The learned Subordinate Judge, after considering the evidence, both oral and documentary, allowed the petition for divorce. Challenging the same, the respondent herein had filed C.M.A.No.27 of 2000 on the file of the II Additional District Court, Erode.

5. The learned Judge reversed the judgment of the Trial Court on the ground that the appellant has not proved the steps taken by him to rejoin the respondent after the order passed in H.M.O.P.No.18 of 1995. Since the dissolution of marriage was sought for, only on the ground of not complying with the order directing restitution of conjugal rights, the appellate Court held that the onus is on the appellant herein to prove that he had taken steps to rejoin his wife. Challenging the said judgment, the appellant is before this Court.

6. Heard Mr.D.Sendhur Kugan, learned counsel appearing on behalf of the appellant.



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7. A perusal of the decree in H.M.O.P.No.18 of 1995 would show that the order therein had been passed after contest. Even prior to filing of the application, the respondent had been living away from the appellant and no compelling circumstances have been proved by the respondent / wife to show as to why she is living away from her husband. Even the allegation that she was not properly treated by her in-laws, has not been proved and she has hardly lived for an year with the appellant. The appellant has also examined an independent witness one P.K.Virudhachalam, who is none other than the maternal uncle of the appellant. He has deposed that it was he, who was responsible for the marriage of the appellant with the respondent. He has also stated that inspite of the orders of Court and the attempts of the Panchayatars thereafter, to get the respondent to resume the matrimonial life, all the attempts had ended in failure. It is the deposition of P.W.2 that after the respondent had refused to rejoin the appellant even after several request, he had advised the appellant to move for divorce. He has also denied the statement of the respondent that attempts were made by her to rejoin the appellant. From the deposition of the respondent in cross, it is clear that she had no intention of showing the child to her husband. It appears that despite Court directing her to bring the child during the



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pendency of application under Section 9 of the Hindu Marriage Act, the respondent had avoided bringing the child. Therefore, the intent is clear that she does not want her child to see her father. The respondent claims that she had gone back to her husband's / appellant's house, after the decree of the H.M.O.P.No.18 of 1995 and the same has not been proved by any independent evidence. Therefore, her contention cannot be believed. Therefore, the finding of the Court below that the appellant had not taken any steps to bring back the respondent after the decree in the petition for restitution of conjugal rights and therefore is not entitled to a decree for divorce, is to say the least erroneous.

8. The respondent, as a wife and an equal partner in a matrimonial relationship has also not taken any steps to rejoin her husband and on the contrary, her allegation that she had gone back to her husband's house, is not proved by any independent evidence, except her interested evidence. The respondent has stayed away from her husband without any reasonable cause. Therefore, the appellant is entitled to a decree for divorce.



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9. In these circumstances, this Civil Miscellaneous Second Appeal is allowed. The order passed by the II Additional District Judge, Erode in C.M.A.No.27 of 2000 is hereby set aside. No Costs. Consequently, the connected Civil Miscellaneous Petition is closed.

01.07.2022

Index : Yes/No
Speaking Order : Yes / No
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To

1. The II Additional District Court, Erode.
2. The Sub Court, Bhavani.
3. The Section Officer,
VR Section, Madras High Court,
Chennai.



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P.T. ASHA, J,

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