



C.M.S.A.No.47 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 25.02.2022

C O R A M :

The Hon'ble Mrs. Justice J.NISHA BANU

C.M.S.A.No.47 of 2008

Balakrishnan

..Appellant/respondent/petitioner

Vs.

Jega Jothimani

..Respondent/appellant/respondent.

PRAYER: CMSA filed under Section 100 read with Order 21 Rule 58 CPC as against the judgment and decree dated 22.01.2008 made in CMA.No.40 of 2007 on the file of the First Additional District Court reversing the judgment and decree dated 15.02.2007 made in H.M.O.P.No.15 of 2005 on the file of the Principal Sub Court , Erode.

For appellant :: Mr.N.Manokaran

For respondent :: Mr.S.Kaithamalai Kumaran



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JUDGMENT

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This CMSA is filed as against the judgment passed in CMA.No.40 of 2007 by the first appellate court, whereby, the decree of divorce granted by the Principal Subordinate Court, Erode, was set aside and thereby, the respondent/wife's petition for restitution of conjugal rights was allowed.

2. On the grounds of cruelty, appellant/husband filed HMOP.No.15 of 2005. Since the grievance of the appellant is that the respondent/wife filed some cases against him and those cases ended in favour of the husband and he got acquitted and that on the proved case of cruelty and for the reasons of irretrievably broken down marriage, the trial court granted divorce in favour of the husband.

3. However, the wife filed CMA for restitution of conjugal rights. The learned First appellate court held that the act of the respondent/wife having gone to the parental house cannot be found to be a good ground for granting an order of divorce and that appellant/husband



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has not cared for his wife and only due to physical and verbal torture in the matrimonial home, respondent wife left her matrimonial home. On such findings, the learned Judge, allowed the appeal filed by the wife.

4. Being aggrieved by the order of the first appellate court, the appellant/husband has filed this appeal. This court admitted the above appeal on the following substantial questions of law:

“1. Whether the First Appellate Court is right in law in refusing to grant decree for divorce inspite of irretrievable broke down of marriage particularly when long separate staying of the couple would make it impossible for them to live together as husband and wife in the light of the decision reported in 2005(4) CTC 287 SC.

2. Whether the First Appellate Court is erred in law in negating the relief of divorce on the ground that the appellant has not taken care of the welfare of his son aged 19 years especially when there was no necessity for the respondent and her son to depend upon the support of the appellant for the past 15 years. ?“



5. A perusal of the entire materials available on record would go to show that the marriage between the parties taken place in the year 1985 and in 1987 they have been blessed with one son. After child's birth, the respondent/wife did not come to matrimonial home and at the time of filing of HMOP in the year 2005, the son was aged 18 years. Now he would be aged 35 years. Even though CMA.No.40 of 2007 has been ordered in favour of respondent/wife, till date no attempt has been taken by both sides to join together. They are living separately for 35 years.

6. Today when the matter is heard, the learned counsel for the respondent/wife would submit that he is having no instructions from his client ie., the respondent/wife.

7. In my considered view, there is a long separation between the parties for nearly 35 years. There is no pleadings on behalf of the wife and established any reasonable cause for remaining away from her matrimonial home after restitution of conjugal rights ordered by the first appellate court. There was no resumption of cohabitation.



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8. It stands established that the marriage between the parties stands broken irretrievably. The substantial questions of law are answered in favour of the appellant-husband.

9. In view of the above reasonings, a decree of divorce granted by the Principal Subordinate Judge, Erode, in H.M.O.P.No.15 of 2005 is restored. The order passed in CMA.No.40 of 2007 is set aside. The CMSA is allowed on the terms indicated above. No costs.

25.02.2022

nvsri/sts

To

1.The First Additional District Judge, Erode.

2.The Principal Sub Judge , Erode.



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J.NISHA BANU, J.

nvsri

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