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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2022

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.M.S.A.NOS.57 & 58 OF 2021

Thangavel

... Appellant/Appellant/Petitioner
in C.M.S.A.No.57 of 2021
... Appellant/Appellant/Respondent
in C.M.S.A.No.58 of 2021

-Vs.-

Sumathi

... Respondent/Respondent/Respondent
in C.M.S.A.No.57 of 2021
... Respondent/Respondent/Petitioner
in C.M.S.A.No.58 of 2021

Prayer in C.M.S.A.No.57 of 2021 : Civil Miscellaneous Second Appeal filed under Section 28(1) of Hindu Marriage Act, read with Section 100 of Code of Civil Procedure, 1908, against the judgement and decree dated 26.02.2021, made in C.M.A.No.26 of 2019 on the file of IV Additional District & Sessions Judge, Coimbatore and confirming decree and Judgment dated 27.09.2019 in H.M.O.P.No.5 of 2014 on the file of Subordinate Judge, Pollachi.

Prayer in C.M.S.A.No.58 of 2021 : Civil Miscellaneous Second Appeal filed under Section 28(1) of Hindu Marriage Act, read with Section 100 of Code of Civil Procedure, 1908, against the judgement and decree dated 26.02.2021, made in C.M.A.No.25 of 2019 on the file of IV Additional District & Sessions Judge, Coimbatore and confirming decree and Judgment dated 27.09.2019 in H.M.O.P.No.116 of 2015 on the file of Subordinate Judge, Pollachi.

For Appellant (in both CMSAs) : Mr.K.Sudhakar

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COMMON JUDGMENT

C.M.S.A.No.57 of 2021 is filed challenging the judgement and decree dated 26.02.2021 passed in C.M.A.No.26 of 2019 on the file of the IV Additional District and Sessions Judge, Coimbatore, which was filed challenging the judgement and decree dated 27.09.2019 passed in H.M.O.P.No.5 of 2014 on the file of the Sub Court, Pollachi.

2. C.M.S.A.No.58 of 2021 is filed against the judgement and decree dated 26.02.2021 passed in C.M.A.No.25 of 2019 on the file of the IV Additional District and Sessions Judge, Coimbatore, which in turn challenges the judgement and decree dated 27.09.2019 passed in H.M.O.P.No.116 of 2015 on the file of the Sub Court, Pollachi.

3. Since the facts are similar in both H.M.O.Ps, the facts as narrated in H.M.O.P.No.5 of 2014 is herein below narrated:

It is the case of the appellant/husband that he and the respondent got married on 15.03.2009 and out of their wedlock, a daughter, namely, Dhanushri was born on 18.12.2009. Thereafter, a son was born on 10.10.2013. This fact was not informed by the respondent/wife to the appellant. It is the case of the appellant that the respondent would often quarrel with the appellant/husband and go to her father's house. That apart, the respondent/wife was very suspicious about her husband interacting with ladies and would make false allegations whenever he spoke to any lady. The respondent was prone to using unparliamentary words and would also abuse the appellant's parents. The respondent was insisting on the appellant living separately and was compelling the appellant to seek a partition of his father's properties. Quarrelling with the appellant, the respondent had returned to her father's house and refused to show the daughter to the appellant. In fact, on 9 earlier occasions, she had returned to her parent's house and on 10th occasion, she failed to return and for nearly two years, she did not return to the appellant's house. The appellant made several attempts to re-unite, but it went in vain. The respondent/wife had threatened to file a compliant under the Dowry Prohibition Act against the appellant/husband and all of these caused immense mental cruelty to the appellant. The appellant had sent a legal notice on 07.12.2013, which had been returned. Therefore, the appellant/husband had come forward with the petition seeking divorce.

4. The respondent-wife had countered the allegations by contending that she was subjected to great deal of physical abuse by the appellant and she had in fact sustained injuries. Since the appellant had requested, she did not file a Police

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complaint and she had also not informed the same to her parents with the sole intent to not upset the harmony at home. She would deny the allegation of the appellant that she was frequently going to her parent's house or that she was a suspicious character. The respondent would submit that she is still willing to live with the appellant/husband for the welfare of the two children.

5. Both H.M.O.P.Nos.5 of 2014 and 116 of 2015 the petitions were jointly tried by the learned Subordinate Judge, Pollachi. Before the Trial Court, the appellant had examined himself as P.W.1 and marked Exhibits P1 to P4. One Balasubramaniam was examined as P.W.2. The respondent-wife examined herself as R.W1 and Exhibits R1 to R3 were marked. The Trial Court, after considering the evidence on record, dismissed the petition filed by the husband for divorce and allowed the petition filed by the wife for restitution of conjugal rights. Aggrieved by the said orders, the husband had come forward to file C.M.A.Nos.25 and 26 respectively before the IV Additional District and Sessions Court, Coimbatore. The learned IV Additional District and Sessions Judge, Coimbatore, on considering the evidence on record and hearing the arguments on both sides, held that the appellant-husband had failed to prove the allegations of mental cruelty and dismissed the appeals. Challenging the same, the appellant/husband is before this Court.

6. Heard the learned counsel for the appellant and perused the materials available on record.

7. A perusal of the records would show that the husband, who had come forward with a case that the wife has threatened him, has not been able to establish the same. The Appellate Court has extracted the evidence of the appellant as P.W-1, where the husband had stated that the wife had prevented him from seeing his children, however he later stated that he had been informed about the ear piercing ceremony of his child at the Temple and he had attended the same. These admissions would clearly disprove the allegation of the appellant that he has been prevented from seeing his children. The witness examined on the side of the appellant as P.W.2 has not been able to prove that there was disharmony between the appellant and the respondent. In his cross examination, P.W.2 has conceded that he has no personal knowledge about the same. It is also seen that the respondent as R.W.1 has clearly deposed that she has not complained against her husband before the Police for the physical abuse done by him only on account of the fact that she wanted to continue her matrimonial life with the appellant for the sake of her children. It would only to go to show that she was willing to live with his husband. Therefore, it is very

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clear that the appellant herein has not proved the allegations made by him and on the contrary, the respondent is able to establish her intent to continue to live along with her husband. In these circumstances, I see no reason to disagree with the findings on facts by both the Courts below. There is no question of law involved in the appeals and accordingly, this Civil Miscellaneous Appeals are dismissed. No costs.

Sd/-
Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

srn

To

1. The Subordinate Judge,
   Pollachi.

2. The IV Additional District & Sessions Judge,
   Coimbatore.

Copy To

The Section Officer,
V.R.Section,
High Court of Madras, Chennai.

+1cc to M/s.K.Sudhakar, Advocate, S.R.No.29063

C.M.S.A.Nos.57 & 58 of 2021

AJS(CO)
RLP(31/05/2022)

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