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C.M.S.A.Nos.14 & 15of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **28.06.2022**

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THE HONOURABLE MS. JUSTICE P.T.ASHA

C.M.S.A. Nos.14 & 15 of 2019

[CMSA.No.14 of 2019]

Mr.Nachimuthu

...Appellant/ Appellant /Respondent

Vs

Mrs.Bhooma

... Respondent/ Respondent/Petitioner

[CMSA No.15 of 2019]

Mr.Nachimuthu

... Appellant/ Appellant /Petitioner

Vs

Mrs.Bhooma

... Respondent/ Respondent/ Respondent

PRAYER in CMSA No.14 of 2019: Appeal filed under Order 41 Rule 1 and Section 96 of CPC, against the judgement and decree dated 21-12-2018 passed in CMA.2/2018 on the file of the Addl. Dist. Judge FTC Mettur in confirming the judgement and decree dated 01-08-2017 passed in HMOP.124/2011 on the file of the Trail Court Sub Judge Mettur Salem District.



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C.M.S.A.Nos.14 & 15of 2019

For Petitioners : M/s. C.P.R. Kamaraj

For Respondent : Mr.A.Sundara Vardharan

PRAYER in CMSA No.15 of 2019: Appeal filed under Order 41 Rule 1 and Section 96 of CPC, Against the judgement and decree dated 21-12-2018 passed in CMA.3/2018 on the file of the Addl. Dist. Judge FTC Mettur in confirming the judgement and decree dated 01-08-2017 passed in HMOP.116/2011 on the file of the Trail Court Sub Judge Mettur Salem District.

For Petitioners : M/s. C.P.R. Kamaraj

For Respondent : Mr.A.Sundara Vardharan

COMMON JUDGEMENT

These two Civil Miscellaneous Second Appeals have been filed by the appellant/ husband. Since the facts in both the appeals are common, I am proceeding to pronounce a common judgment.



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2. Civil Miscellaneous Second Appeal No.14 of 2019 has been filed against the Judgement and Decree dated 01/08/2017 in C.M.A. No.2 of 2018 on the file of the Additional District Court FTC, Mettur, confirming the Judgement and Decree in HMOP No.124 of 2011 on the file of the Sub Judge Mettur. H.M.O.P.NO.124 of 2011 is the petition for restitution of conjugal rights filed by the respondent/wife.

3. Civil Miscellaneous Second Appeal No.15 of 2019 has filed challenging the Judgement and Decree dated 01/08/2017 in C.M.A. No.3 of 2018 on the file of the Additional District Court FTC, Mettur, confirming the Judgement and Decree in HMOP No.116 of 2021. HMOP No.116 of 2021 has been filed by the appellant/ husband seeking divorce.

4. The appellant/husband had filed the petition for divorce on the ground of cruelty and desertion. The grounds of cruelty set out in the petition are as follows:-

A) That the respondent/wife had accused the appellant's mother of having poisoned their daughter.

B) That the respondent/wife has left her matrimonial home without



sufficient cause.

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5. The respondent/wife on the other hand had filed HMOP No.124 of 2011 seeking restitution of conjugal rights. The respondent/wife in her petition would submit that she had been subjected to a lot of ridicule as she had given birth to two girls. The second daughter had died of snake bite when she was at her paternal grandfather's house and the respondent had come to learn that the appellant's mother and sister had informed the relatives that they have killed the child as the respondent herein had not given birth to a son.

6. The respondent/wife further submitted that after the intervention of Panchayatar the appellant herein had agreed to set up a separate family at Anthiyur where the respondent, her elder daughter and the appellant had lived together till the month of May 2009. Thereafter, without any prior intimation the appellant had simply left the respondent/wife and her child and went away and had never returned. The respondent's parents had approached the appellant and requested him to return home but he refused the same. However, the appellant came over with his relatives informing the



respondent and her parents that he would return to the matrimonial home if the respondent herein gave an assurance that she would not continue to work and would come and join the appellant at his parent's house and they continue to live as a joint family. The respondent who had already undergone a hardship at the hand of her in-laws was reluctant to do so. Therefore, the appellant had deserted her without any reasonable cause. Since the petitioner wanted to resume her matrimonial life with the appellant, she had filed a petition for restitution of conjugal rights.

7. After contest HMOP No.116 of 2011 filed by the husband for divorce was dismissed on the ground that no grounds had been made out for granting the decree for divorce, HMOP No.124 of 2011 filed by the wife was however, allowed. Challenging the said judgment and decree the appellant had filed the C.M.A No.3 of 2018 and CMA.No.2 of 2018 respectively. The appeals were also dismissed and the appellant has come forward with the present appeals.

8. Heard both the learned counsels.



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9. The appellant/husband has filed a petition for divorce on the ground of cruelty and desertion. The only ground of cruelty which has been alleged by the appellant is that the respondent had falsely accused his mother of having poisoned to death his second daughter and the second ground was that the respondent has been without any reasonable cause living away from her matrimonial home. On the contrary, the wife has come forward to file an application for restitution of conjugal rights which clearly shows her intent to re-join her matrimonial home. In fact it is the respondent's case that he had set up a separate residence at the behest intervention of Panchayatar and after living with the respondent and her child for some time the appellant had all of a sudden left the matrimonial house and therefore, desertion is only on the side of the appellant and not on the side of the respondent.

10. The Courts below have rightly perused the evidence both oral and documentary and dismissed the petition filed by the appellant/husband for divorce and allowed the petition for restitution of conjugal rights filed by the respondent/ wife.



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WEB COPY 11. In the light of the above, these Civil Miscellaneous Second

Appeals are dismissed. No costs.

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Index : Yes/No

Internet: Yes/No

Speaking / Non-Speaking

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To

1. The Addl.Dist.Judge FTC Mettur.

2. The Trail Court Sub Judge Mettur Salem Dist.

3.The Section Office,
V.R.Section,
High Court, Madras.



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P.T. ASHA, J,

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