



C.M.S.A.No.28 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.03.2022

CORAM

THE HON'BLE MRS.JUSTICE J.NISHA BANU

C.M.S.A.No.28 of 2014 and
M.P.No.1 of 2014

S.Thamayanthi

... Appellant

vs.

N.Thanigaimalai

... Respondent

Prayer :

Civil Miscellaneous Second Appeal is filed under Section 28 of Hindu Marriage Act, 1955 to set aside the Judgment and Decree dated 28.09.2012 made in C.M.A.No.3 of 2011 on the file of the Principal Distict Judge, Dharmapuri in confirming the decree and Judgment dated 29.03.2011 made in H.M.O.P.No.8 of 2008 on the file of Subordinate Court, Harur.

For Appellant : M/s.S.Kamatchi

For Respondent : M/s.Arun Anbumani



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J U D G M E N T

The appellant / wife has filed the present Civil Miscellaneous Second Appeal to set aside the Judgment and Decree of Divorce dated 28.09.2012 made in C.M.A.No.3 of 2011 on the file of the learned Principal District Judge, Dharmapuri, whereby, the order of dismissal passed in H.M.O.P.No.8 of 2008 dated 29.03.2011 has been reversed.

2. Originally H.M.O.P.No.8 of 2008 has been filed by the respondent / husband, for divorce on the ground of cruelty and desertion. According to the respondent/husband, he married the appellant on 17.08.2000 at Harur and the marriage was solemnized, as per Hindu Rites and Customs. The respondent/husband was working as a teacher in Sri Vidhya Mandhir Matriculation Higher Secondary School from 1996. The appellant deserted the matrimonial home on 15.03.2001 and she did not give any respect to him. A female child



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was born on 17.04.2001 and the same was not informed to the respondent/husband. She continued to remain in her parent's house till the month of February 2003. She gave a complaint before the Sub-Inspector of Police stating that the respondent/husband demanded dowry and a case was filed on 09.03.2004.

3. In the said Original Petition, counter statement has been filed by the appellant/wife whereby she denied the averments raised in the Original Petition. According to her, the respondent/husband demanded dowry and ill-treated her. It was further stated that the respondent/husband was having illicit intimacy with his two sister-in-laws. He also demanded 10 sovereigns of gold and a sum of Rs.40,000/- as dowry.

4. On the findings that the respondent/husband failed to prove the allegations of cruelty caused by the appellant/wife and her desertion, the Trial Court dismissed the H.M.O.P.No.8 of 2008.



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Aggrieved against the said order of the trial Court, the respondent/husband, has filed appeal before the Lower Appellate Court in C.M.A.No.3 of 2011 and the same was allowed on 28.09.2012. As against which, the appellant/wife has filed the present Civil Miscellaneous Second Appeal.

5. The grounds raised in this Civil Miscellaneous Second Appeal are that the Lower Appellate Court failed to consider her willingness to live with the respondent / husband. The husband alone is the person, who is responsible for dissolution of marriage and there is no dissolution on the part of the appellant / wife. It was only because of the respondent / husband's illicit intimacy with one Valli, deserted her and the respondent sought divorce on the ground of cruelty and desertion. The trial Court after analyzing the evidence dismissed the H.M.O.P., but the Lower Appellate Court allowed the civil miscellaneous appeal and granted decree of divorce.



6. A perusal of records would go to show that before the lower Appellate Court, the respondent / husband raised the ground that the appellant / wife filed a criminal case against him on false allegations that he is having illicit intimacy with one Valli, which caused mental agony to him and since there is no chance of living together, the respondent/husband sought to reverse the judgment of the trial court.

7. After considering the materials available on record and on re-appreciation of evidence, the Lower Appellate Court has allowed the appeal filed by the respondent/husband, against which, the appellant / wife is before this Court.

8. In the present Civil Miscellaneous Second Appeal, the appellant/wife raised the following substantial questions of law:-

1. Whether the First Appellate Court has committed an error in grantng the reliefs of Divorce on the basis of the averments contained in the counter filed by the appellant in the HMOP?



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2. Whether the First Appellate Court was correct in rejecting the documents filed under Exhibits Ex.R2 to Ex.R7, by observing that the same were obtained after filing of the HMOP?

3. Whether the First Appellate Court is justified in granting the decree of divorce, on the ground of mental cruelty, even though there was no evidence let in by the respondent to prove the same?

9. The learned counsel for the appellant/wife further submits that the Lower Appellate Court has committed an error in holding that the appellant/wife has not proved the illicit intimacy of the respondent/husband with his sister-in-laws. The lower appellate court ought to have seen that prior proceedings initiated by the appellant/wife against her husband was only with a view to force him to live together and not to give him any mental agony. Hence he prays for setting aside the judgment of the Lower Appellate Court.

10. Heard the learned counsel for the appellant as well as respondent and perused the documents placed on record.



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11. It is seen from the materials available on record that the respondent / husband and the appellant / wife got married in the year 2000 and they were living together only for six months. The allegations raised by the respondent/husband in H.M.O.P.No.8 of 2008 is that the appellant/wife did not give respect to him and abused him in filthy language.

12. It is also transpired from the records that from February 2003 onwards, the appellant/wife has been living separately and the evidence of R.W.2 is that there was panchayat between the appellant and the respondent, but the respondent refused to live with the appellant / wife. Thereafter, the respondent/husband filed a petition for divorce and both were living separately.

13. According to the respondent/husband, the appellant / wife behaved in aggressive and arrogant manner, which caused mental



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agony to him and he could not tolerate her abusive language, who was working as a school teacher and could not concentrate in his job. In view of the same, the respondent/husband prayed before the Lower Appellate Court to allow his petition filed for divorce.

14. The Lower Appellate Court on appreciation of evidence has come to the conclusion that the allegation of the wife that the respondent/husband is having illicit intimacy with both of his sister-in-laws were not substantiated by any evidence. It is further pointed out by the learned Judge that both of them are living separately from the date of desertion. There is no intention to live together and as such, co-habitation permanently come to an end.

15. The first appellate court has rightly come to the conclusion to grant divorce. After pursuing all the material on record, this court has reached to a conclusion appellant/wife fails to prove any of her claims against the respondent/husband. The 1st question of law is



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answered accordingly. The first appellate court has given detailed/
reasoned opinion in rejecting the aforesaid exhibits. This Court cannot
find any infirmity with the said order. Perusal of records clearly
indicates that both parties are not living together since 2001, forcing
someone to stay in a marriage relation after its irretrievably
breakdown is cruelty. The Appellant/wife alleged extramarital affairs
and kept the birth of daughter a secret all these things amount to
mental agony. Therefore, this court cannot find any fault with the
order of the First Appellate court. Accordingly, the substantial
questions of law 2 and 3 are answered as against the appellant.

16. The findings of the learned Judge is based on evidence and
hence, no interference is warranted. This Court is of the view that the
marriage between the respondent/husband and the appellant/wife
failed and there is no other way to resolve the issue. They have been
separated from the year 2001 till now, which is nearly 22 years.
Hence, this Court is of the considered view that the marriage has been



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irretrievably broken down and they cannot lead a happy married life hereafter. Accordingly, the present Civil Miscellaneous Second Appeal stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

18.03.2022

Index : Yes/No
Internet : Yes/No
Speaking /Non-Speaking Judgment
kkd/nvsri

J.NISHA BANU,J.



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To

1. The Principal Distict Judge,
Dharmapuri
2. The Subordinate Judge,
Harur.
- 3.The Section Officer
V.R.Section
High Court of Madras.

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