



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.02.2022

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.A.No.3507 of 2021
and C.M.P.No.20266 of 2021

R.Sivakumar

...Appellant/Respondent

vs.

1.S.V.Gowri

...1st Respondent/Petitioner

2.S.Velankanni

...2nd Respondent/2nd Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 28 of the Hindu Marriage Act, to set aside the judgment and decree dated 27.08.2021 in H.M.O.P.No.4268 of 2018 on the file of the VII Additional Family Court at Chennai, and dismiss the above O.P as devoid of merit.

For Appellant : Mr.V.Neethidurai
For R1 : Mr.R.Y.George Williams

J U D G M E N T

[Judgment of the Court was made by V.SIVAGNANAM, J.]

This Civil Miscellaneous Appeal arises against the order of the VII Additional Family Court at Chennai, passed in H.M.O.P.No.4268 of 2018 on 27.08.2021.

2. Brief facts of the case are that the first respondent/wife (S.V.Gowri @ Gowri Bai) filed petition for divorce alleging cruelty and adultery by her husband namely R.Sivakumar and succeeded in the plea of cruelty and adultery before the VII Additional Family Court at Chennai, in H.M.O.P.No.4268 of 2018. Challenging the same, the present appeal has been filed before this Court.

3.The learned counsel appearing for the appellant submitted that the trial court failed to appreciate the pleadings, evidence and documents produced before the Court. The evidence of R.W.1 was not properly appreciated by the trial Court. The first respondent did not prove the allegation of



illicit relationship of her husband with the second respondent/Velankanni. In fact, the first respondent deserted her husband in the year 2006. Thereafter, the husband filed restitution of conjugal rights petition under Section 9 of Hindu Marriage Act before the Principal Family Court, Chennai, in O.P.No.1445 of 2006. In pursuance of compromise, again they lived together for 12 years. The Trial court failed to consider this fact also and relied upon the inadmissible documents of xerox copy from the School Authority to connect her husband with the children of the second respondent/Velankanni. The Trial Court acted upon hearsay statement of the first respondent. The trial Court erred in finding cruelty and adultery of husband and reiterated other grounds raised in the grounds of appeal and thus pleaded to set aside the order of the trial Court and to allow the appeal.

4.The learned counsel for the first respondent supported the order of the trial Court and further contended that the cruelty and adultery on the part of the husband is proved by the oral and documentary evidence before the trial Court and thus pleaded to dismiss the appeal.

5.We have considered the matter in the light of the submissions made by the counsel for the parties and perused the records.

6.The appellant is the husband, first respondent is the wife and the second respondent is alleged as the mistress of the appellant/Sivakumar. The marriage between the parties was solemnized on 13.12.1995. Thereafter they lived together and have two female children namely R.S.Sree Priyanka and R.S.Rubika. It is alleged that the husband started to consume liquor and treated the first respondent violently. Apart from this, husband is having sexual relationship with many women particularly, he is having permanent illicit relationship with the second respondent/Velankanni and also having children through her. In this aspect, the respondent/wife let in evidence before the trial Court, in order to prove the illegal relationship with the second respondent/Velankanni and children are born to them. The birth certificate of the children namely R.S. Rahul and R.S.Sonyka, were marked as Ex.P.6 and Ex.P.7. Further, the trial Court relied upon the contention of the husband in his counter in I.A.No.5590 of 2018 in which he had admitted that he had married one Velankanni and two children were born through her. On proper appreciation of evidence, the trial Court came to a conclusion that the wife proved her case of cruelty. It was also found that the appellant was leading an adulterous life with the said Velankanni.



7. Therefore, the findings of the trial Court based on oral and documentary evidence are in order and as such, there is no reason to interfere with the well merited order of the trial Court.

9. In the result, this Civil Miscellaneous Appeal stands dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petition is also closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vsn

To

The Judge
VII Additional Family Court
Chennai

Copy to

The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.R.Y.George Williams, Advocate sr 7840.

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SR II (CO)
SP(29/03/2022)