



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2022

Coram

The Hon'ble Mr. Justice C.V.KARTHIKEYAN

C.M.S.A.No.18 of 2017

T.Nandhakumar ..Appellant/Appellant/ Petitioner

vs

N.Sridevi ..Respondent/Respondent/Respondent

Prayer : Civil Miscellaneous Second Appeal is filed under Section 28 of the Hindu Marriage Act against the Judgment and Decree dated 29.11.2016 made in H.C.MA.No.1 of 2016 on the file of the III Additional District Judge, Vellore @ Tirupattur confirming the judgment and decree in H.M.O.P.No.33 of 2009 dated 30.06.2014 on the file of Subordinate Court, Vaniyambadi.

For Appellant .. M/s.M.Ashwinkumar for
M/s.Sarvabhauman Associates

For Respondent .. Steps due

JUDGMENT

The Civil Miscellaneous Second Appeal has been filed questioning the judgment in H.C.M.A.No.1 of 2016 dated 29.11.2016 passed by III Additional District Judge, Vellore @ Tirupattur. H.C.M.A.No.1 of 2016 has been filed by the present appellant questioning the order and decretal order dated 30.06.2014 in H.M.O.P.No.33 of 2009 on the file of the Subordinate Judge, Vaniyambadi, and the said HMOP, in turn was filed by the present appellant seeking dissolution of marriage, which had taken place between him and the respondent on 13.10.2005, taking recourse to Section 13(1) and (i-a) of the Hindu Marriage Act, 1955.

2. In H.M.O.P.No.33 of 2009, the appellant herein has stated that the marriage had taken place between him and the respondent on 13.10.2005 at Tirupattur G.P.Mahal, in accordance with Hindu rites and customs. Thereafter, a female child was born to them on 20.10.2006. It is stated by the learned counsel for the appellant/husband that the daughter is aged about 14 years as on date. It is claimed that the respondent/wife



deserted and abandoned him. The appellant also found that the respondent suffered from some heart disease and complained that the said fact was not disclosed prior to the marriage. It was further stated that the respondent had left the companionship of the appellant and went away along with her daughter to live with her parents on 17.01.2008. Claiming dissolution of the marriage on the aforesaid grounds HMOP No.33 of 2009, had been filed by the husband.

3. In counter, the respondent firstly denied all the allegations and further stated that heart problem had been treated and she had got cured from it. It was also stated that the appellant used to scold and beat her. It was further stated that the appellant had not maintained both her and daughter, and that he demanded money from her father to invest in share market. It was also stated, that in spite of all these facts, she was ready and willing to live with him and that the divorce petition may be dismissed.

4. The parties went to trial and during the course of trial, the appellant was examined as PW1 and he also examined one further witness as PW2. He also marked as Exs.P1 to P9. The respondent examined herself as RW1 and examined two further witnesses as RW2 and RW3 and marked as Ex.R1.

5. During the course of trial, the learned Subordinate Judge, Tirupattur held that the averments regarding cruelty had not been established by the appellant/husband and thereafter held that the HMOP filed for dissolution of marriage, does not require consideration and dismissed the same.

6. Challenging the same, the appellant has filed CMSA No.1 of 2016 which came up before the III Additional District Court, Vellore at Tirupattur. The learned Additional District Judge confirmed the findings of the trial Court. The learned Additional District Judge stated that the heart problem of the respondent/wife had been taken care by medical professionals and that she had no other problems. The entire medical expenses have also been borne only by the father of the respondent. It was stated that the heart ailment was a normal disease and it had been cured by operation and cannot be considered as a ground for divorce. It was also stated that, even though the appellant and respondent/wife had been living separately from 2008, the respondent had filed a petition for restitution of conjugal rights, which indicated that she was ready and willing to live with the husband and therefore, divorce was refused to be granted. It was also found that the other allegations are petty in nature and the same prevail in every family and that there was no real dispute between the parties. Therefore, the first Appellate Court did not interfere with the order and decretal



order of the trial Court and dismissed the appeal.

7. The learned counsel for the appellant/husband before this Court stated that, since allegations had been raised between the parties, it would be highly impractical on their part to live together. Learned counsel further pointed out that they are living separately from 2008 and the marriage has been severed and therefore, this Court should allow the appeal and grant divorce to the parties and permit them to go on their separate way.

8. However, as stated by the learned Additional District Judge in the First Appeal, the heart problem was a normal disease which appears to be root cause for filing of the petition and the said ailment had been cured by way of operation. As a matter of fact, the first Appellate Court, considering the nature of the petty quarrels, had refused to grant an order of divorce. It is also brought to the notice of this Court that the appellant is not paying any maintenance to the respondent or his daughter. I do not find any reason to interfere with the judgments of the Courts below which refused to grant an order of divorce against the appellant herein. The appellant had failed to establish the issue of cruelty. There is no material evidence produced by him in this regard even before the trial Court as well as the first Appellate Court. At this juncture, it has to be stated that the reasons stated seeking divorce does not survive any more, since the respondent has been cured of her heart ailment. The judgments of the Courts below are cogent and I hold that this appeal is frivolous.

9. Therefore, this Civil Miscellaneous Appeal stands dismissed with costs of Rs.25,000/- payable to the respondent directly on or before 31.05.2022.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

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To

1. The III Additional District Judge,
Vellore @ Tirupattur.



2. The Subordinate Court,
Vaniyambadi, Vellore.

+1cc to M/s.Sarvabhauman Associates, Advocate SR.No.9962

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VBM(CO)
GMY (23/05/2022)