



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2022

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.M.A.No.3463 of 2017

M.Venkatesh

... Appellant/Petitioner

vs

V.Madhammal

... Respondent/Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984 against the decree and judgment dated 04.10.2017, made in F.C.H.M.O.P. No.153 of 2017 on the file of the Family Court, Dharmapuri.

For Appellant : Mr.C.Prabakaran

For Respondent : Not claimed

JUDGMENT

[Judgment of this Court was delivered by T.RAJA, J.]

The appellant has come to this Court, challenging the correctness of the impugned decree and judgment dated 04.10.2017 passed in F.C.H.M.O.P. No.153 of 2017 by the Family Court, Dharmapuri, dismissing the prayer for grant of divorce.

2.Learned counsel appearing for the appellant submitted that after the marriage was solemnised between the appellant and the respondent on 07.03.1989 as per the Hindu rites and customs, they were blessed with a male child, namely, Kamalesh on 02.12.1995. When they came to Dharmapuri from Hosur, due to the matrimonial disputes cropped up between them, the respondent left the matrimonial home. Further, a Panchayat was held on 27.05.1998, in which, an agreement was reached between the appellant and the respondent, facilitating their separation and a copy of Muchalicka, marked as Ex.P1, was filed before the Family



Court, Dharmapuri, while filing F.C.H.M.O.P. No.153 of 2017 under Section 13(1)(i-a)(i-b) of the Hindu Marriage Act, 1955 complaining cruelty and desertion. Learned counsel appearing for the appellant further submitted that when the respondent parted with the appellant's company in the year 1998, 24 long years ago by leaving the Muchalicka in the presence of the panchayatars making it clear that she has no interest to live with the appellant and she has been living with another person, by name Venkatesh, the appellant should be granted decree for divorce. Learned counsel for the appellant further submitted that as the respondent was rightly set exparte before the Family Court because there was no need for her to contest the case for the simple reason that she had already appeared before the Panchayat and executed Muchalicka, ending the matrimonial life, surprisingly, the Family Court, Dharmapuri, in spite of the fact that the Muchalicka was filed as Ex.P1, which supporting the case of the appellant that the respondent had left the appellant's company in the year 1998 and the same was signed in the presence of the Panchayatars, erroneously ignoring the two vital aspects, namely, that she did not come for contesting the case and she had also executed the Muchalicka, wrongly dismissed the prayer for divorce. Therefore, the appellant is constrained to come to this Court.

3. There is no representation for the respondent. Despite notice, the same has been returned to the sender with an endorsement 'not claimed' that shows that the respondent has been evading to receive the notice.

4. We are able to see that the appellant and the respondent, having solemnised their marriage on 07.03.1989, left their company in the year 1998 by entering into a Muchalicka between themselves in the presence of the panchayatars at Dharmapuri. A perusal of the Muchalicka shows that the respondent had deserted the appellant and after the panchayat was held on 27.05.1998, she also agreed for execution of Muchalicka, ending their matrimonial life. In spite of the same, the Family Court, Dharmapuri, wrongly referring to Section 23(1)(d) of the Hindu Marriage Act, which is extracted as under, has dismissed the petition filed by the appellant:

'(d) There has not been any unnecessary or improper delay in instituting the proceeding.'

5. A perusal of the above provision shows that there shall not be any unreasonable delay in the initiation of the proceedings. When both the appellant and the respondent parted their life in the year 1998 by executing a Muchalicka dated



27.05.1998 and the claim of the appellant shows that the respondent has been living with another person, by name Venkatesh, which necessitated the appellant to file a case for divorce in the year 2017, the findings given by the Family Court, Dharmapuri, dismissing the petition filed by the appellant for grant of divorce on the ground of inordinate delay, are improper. Since the Muchalicka dated 27.05.1998, entered into between the appellant and the respondent in the presence of the panchayatars, has ended the matrimonial life 24 long years ago and the respondent, who was set exparte before the Family Court, has not chosen to come and argue her case either by her or through her counsel, we have no hesitation to legally dissolve the marriage solemnised between the appellant and the respondent. When the respondent/wife did not come forward to disprove the execution of Muchalicka dated 27.05.1998, this Court finds no hesitation to accept the execution of Muchalicka by both parties on 27.05.1998 before the panchayatars. Therefore, the decree and judgment dated 04.10.2017, made in F.C.H.M.O.P. No.153 of 2017 on the file of the Family Court, Dharmapuri are set aside. Accordingly, this appeal stands allowed. No costs.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

vga

To

1.The Judge,
The Family Court, Dharmapuri.

Copy to:The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.C.Prabakaran, Advocate SR.No.1460

C.M.A.No.3463 of 2017

BS(CO)
CB(17/02/2022)