



C.M.A(MD)No.1017 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

and

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

C.M.A(MD)No.1017 of 2016

J.P.Sunil

... Petitioner/Appellant

Vs.

Yogasini

... Respondent/Respondent

PRAYER: Appeal filed under Section 19 of the Family Court Act, against the fair and decreetal order passed in H.M.O.P.No.209 of 2014 dated 08.07.2015 on the file of the Family Court, Tirunelveli.

For Appellant :Mr.Raguvaran Gopalan
For Respondent :Mr.P.Santhosh Kumar

JUDGMENT

(Judgment of the Court was delivered by **M.S.RAMESH, J**)

This Civil Miscellaneous Appeal is directed against the fair and decreetal order passed in H.M.O.P.No.209 of 2014 on the file of the Family Court, Tirunelveli, dated 08.07.2015.



2. The appellant/husband had filed a petition before the Family Court, Tirunelveli, for dissolving his marriage with the respondent herein that took place on 22.03.2004 under Section 13(1) (i-a)(i-b) of the Hindu Marriage Act, 1955, on the grounds of cruelty and desertion.

3. On the strength of the pleadings, the Family Court had framed the following two issues:

“(i) Whether the petitioner is entitled for an order of divorce?; and

(ii) To what other relief, the petitioner is entitled to?

4. The petitioner/husband had examined himself as P.W.1 together with an independent witness as P.W.2 and had marked Exs.A1 to A19. Likewise, the respondent/wife examined herself as R.W.1 and had marked Exs.B1 to B3.

5. The trial Court in the impugned fair and decreetal order, dated 08.07.2015, had extracted the pleadings and framed issues and thereafter, without any reference to the oral and documentary evidences to substantiate as to whether there was any cruelty or desertion on the part of the respondent/wife, had rendered independent findings purely on surmises.



6. The basic procedure that ought to have been adopted by the trial Court while dealing with a petition under Section 13(1) (i-a) (i-b) of the Hindu Marriage Act, is for consideration of oral and documentary evidences let in before it and thereafter, come to a final decision based on such evidences. In the instant case, this basic procedure for dealing with a petition for divorce, has not been complied with.

7. Though the petitioner herein has raised several grounds attacking the order of dismissal of his divorce petition by the Family Court, we do not intend to go into the sanctity of these grounds, for the simple reason that we intend to direct the Family Court, to re-appreciate the evidences let in before it and come to a final conclusion and that, any findings rendered by us on the grounds raised by the petitioner, would have an impact on the fresh decision that is to be arrived at by the Family Court.

8. In the light of the above discussion, the fair and decreetal order, dated 08.07.2015, passed in H.M.O.P.No.209 of 2014 on the file of the Family Court, Tirunelveli, is set aside and the matter is remanded back to the Family Court, Tirunelveli, for fresh consideration.



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9. The trial Court shall commence the divorce proceedings from the stage of conclusion of the trial and after affording opportunity to both the petitioner as well as the respondent herein, shall pass a fair and decreetal order, after appreciation of all the oral and documentary evidences produced before it. Such an exercise of passing final order, shall be done at least within a period of three months from the date of receipt of a copy of this judgment.

10. This Civil Miscellaneous Appeal is allowed accordingly.

No Costs.

[M.S.R.,J.] & [N.A.V.,J.]

17.11.2022

Index : Yes/No

Internet : Yes/No

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To:

WEB COPY

- 1.The Judge,
Family Court,
Tirunelveli.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



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M.S.RAMESH, J.
AND
N.ANAND VENKATESH, J.

pm

JUDGMENT MADE IN
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