



C.M.A(MD)No.1264 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 09.12.2022

CORAM

**THE HON'BLE DR JUSTICE DR G.JAYACHANDRAN
AND
THE HON'BLE MR JUSTICE SUNDER MOHAN**

C.M.A(MD)No.1264 of 2017

Velusamy

.. Appellant/Petitioner

Vs.

Tmt.B.Shanthi

.. Respondent/Respondent

Appeal filed under Section 19(1) of the Family Court Act, 1984, praying this Court, to allow this Civil Miscellaneous Appeal by setting aside the judgment and decree passed by the learned Family Court, Tiruchirappalli in H.M.O.P.No.61 of 2014 dated 11.03.2016.

For Appellant :Mr.D.Selvanayagam

For Respondent :Mr.A.Senthilkumar



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JUDGMENT

DR G.JAYACHANDRAN,J.
and
SUNDER MOHAN,J.

The appellant, who is the husband of the respondent, has filed a petition in H.M.O.P.No.61 of 2014, for divorce before the Family Court, Trichy and the said petition was dismissed. Challenging the same, the present appeal is preferred by the appellant.

2.From the submissions made by the learned counsel, it appears that for more than 15 years, they are separated and both civil and criminal proceedings are pending. But to decide this appeal against the order of the Family Court, Trichy, the short point required to be considered is whether the dismissal of the divorce petition filed by the appellant on the ground of jurisdiction is sustainable.

3.The learned counsel appearing for the appellant would submit that the parental home of the appellant (husband) is Thiruverumbur and after the marriage, which was solemnized at Thanjavur, spouse lived in the parental



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home for some time. Hence, the Family Court, Trichy, has jurisdiction to hear his divorce petition. In addition, prior to the filing of the divorce petition in the year 2014, the appellant filed a petition under Section 9 of the Hindu Divorce Act, for restitution of conjugal rights, before the Principal Sub-Court, Trichy, which was taken on file as H.M.O.P.No.10 of 2007, in which, the respondent contested the matter and succeeded. The petition for conjugal rights filed by the appellant got dismissed on 23.12.2010. Having waited for more than two years for the respondent to come and join with him in spite of the dismissal of the restitution of conjugal rights, realising that there is no chance of reunion, the appellant filed a divorce petition before the Family Court, Trichy and it was taken on file in H.M.O.P.No.61 of 2014. Having conceding the territorial jurisdiction of the Court in Trichy in the earlier proceedings, the respondent has taken a plea that no cause of action arose within the territorial jurisdiction of the Family Court, Trichy and being convinced with the said plea, the Family Court Trichy has dismissed the said H.M.O.P.

4.The appellant has chosen the Family Court, Trichy, since his parental home falls within the territorial jurisdiction of the Family Court,



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Trichy and claims that for a brief period, the appellant and the respondent lived as husband and wife at Thiruverumbur, which falls within the jurisdiction of the Family Court, Trichy. However, as pointed out by the learned counsel appearing for the respondent, this submission made across the Bar, is contrary to his pleadings, wherein, it is stated that the respondent had no inclination live with the in-laws at matrimonial home and she never stayed in the in-law's house (that is parental house of the appellant at Trichy).

5.In any event, as pointed out by the Court below that no part of cause of action arose within the jurisdiction of the Family Court, Trichy. The Court below has rightly dismissed the petition without advertng to the merits of the case. This Court is also not inclined to look into the merits of the case, though the spouse are living separately for more than 15 years. This Court makes it clear that the dismissal of the H.M.O.P., for want of jurisdiction will not be an impediment for the appellant herein to file a fresh H.M.O.P before the appropriate Court, which has jurisdiction to deal with the matter.



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6. With the above observation, this Civil Miscellaneous Appeal is disposed of. No costs.

(G.J.,J.) (S.M.,J.)
09.12.2022

Index: Yes/No
Internet: Yes/No
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To

1. The Family Court,
Tiruchirappalli.

2. The Section Officer,
VR Section,
Madurai Bench of Madras
High Court,
Madurai.



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