



CMSA.No.8 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.06.2023

PRONOUNCED ON : 24.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

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R.Senthil Raja

Appellant

Vs

S.Umavathi

Respondent

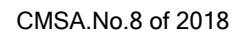
Prayer:- This Civil Miscellaneous Second Appeal has been filed, against the order dated 17.11.2017, made in CMA.No.3 of 2017, by the III Additional District Court, Salem, confirming the order dated 31.02.2016 made in HMOP.No.71 of 2008, by the Sub Court, Mettur and in ordering restitution of conjugal rights in favour of the wife.

For Appellant : Mrs.Jayasudha Suryanarayanan

For Respondent : Mr.M.Senthil Kumar

JUDGEMENT

1. This Civil Miscellaneous Second Appeal has been filed, by the husband, against the order, dated 17.11.2017, made in CMA.No.3 of 2017, by the III Additional District Court, Salem, confirming the order, dated 31.02.2016 made in HMOP.No.71 of 2008, by the Sub Court, Mettur and in ordering restitution of conjugal rights in favour of the wife.
2. The marriage between the Appellant/ husband and the Respondent/ wife



3. After trial, by the impugned order, the Trial Court has dismissed the petition filed by the husband, seeking divorce, on the ground that the Appellant/ husband failed to prove the grounds of cruelty, by adducing valid evidence and also the Petition filed by the wife, seeking restitution of conjugal rights on the ground of desertion. In the appeal filed by the Appellant/ husband as against the impugned common judgement of the Trial Court, the lower appellate court, while dismissing the relief of divorce, has granted the relief of restitution of conjugal rights in favour of the wife. Aggrieved by the same, this Civil Miscellaneous Appeal has been filed by the husband.
4. This Court heard the submissions of the learned counsel on either side.



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5. The learned counsel for the Appellant/ husband would submit that the Respondent/ wife left the matrimonial home and living separately, without any valid reasons, which would amount to mental cruelty and desertion and that though there are findings of the Trial Court for denying the relief of restitution of conjugal rights and ample evidence, it cannot refuse to grant a decree of divorce and that the lower appellate court also without assigning proper reasons cannot reverse the order of the Trial Court in respect of the dismissal of the relief of restitution of conjugal rights. The learned counsel would further submit that living separately for more than two years even after passing of the decree of divorce itself is a ground to grant a decree of divorce and that the impugned orders of the court below are not sustainable, since they were passed against the established principles of law.
6. On the other hand, the learned counsel for the Respondent/ wife has submitted that the Appellant/ husband frequently quarrelled with the Respondent/ wife for each and every act and that often demanded money from her parents and that the Respondent/ wife has been tolerating all the cruelties and quarrel made by the Appellant/ husband. The learned counsel would further submit that the Respondent/ wife was driven out of the matrimonial home and that if the marriage between them is dissolved, the future of the child will be spoiled and that all the material facts had been considered by the lower appellate court and rightly a decree for restitution of conjugal rights was granted in favour of the wife and the Petition for divorce was dismissed.



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7. This Court considered the submissions of the learned counsel on either side and also perused materials placed on record.

8. The Appellant/ husband has filed HMOP.71 of 2008, seeking divorce and after two years, the Respondent/ wife has filed HMOP.No.52 of 2010, seeking restitution of conjugal rights. By the common impugned judgement of the Trial Court, both the petitions were dismissed, thereby meaning that the husband did not get divorce and the wife also did not get the right of restitution of conjugal rights.

9. The husband alone has filed the appeal, challenging the order of dismissal of divorce petition in HMOP.No.71 of 2008 alone. Though the wife did not file any appeal, challenging the dismissal of HMOP.No.52 of 2010, the lower appellate court, while dismissing the divorce petition, has granted the restitution of conjugal rights in favour of the wife. This Civil Miscellaneous Second Appeal has been filed by the husband, questioning the dismissal of his petition, seeking divorce and the order of restitution of conjugal rights.

10. Admittedly, the marriage between the Appellant/ husband and the Respondent/ wife took place on 23.05.2004 and they were living together till 17.01.2005. According to the Appellant/ husband, on 17.01.2005, both went to the Respondent/ wife parents house for Pongal Festival and the Respondent/ wife stayed there and did not come back to the matrimonial home. Only on 05.05.2005, she came back to live with him that too after panchayat. Again on 18.07.2005, the Respondent/ wife left the matrimonial home and went to her parents house and a male child was born to them on



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23.09.2005. After delivery, she came to the matrimonial home on 30.01.2006. Again, she left to her parents house on 15.07.2006. Hence, the Appellant/ husband issued a legal notice, calling upon the Respondent/ wife to come and live with him. The Respondent/ wife has issued a reply, dated 29.07.2006, stating that she is willing to live with the Appellant/ husband, only when he got separated from the family and a separate accommodation/ house is set up. The Appellant/ husband also set up a rented separate accommodation and thereafter, the Respondent/ wife joined the Appellant/ husband on 04.08.2006, but again she left the house on 10.08.2006 for the reasons best known to her and did not return, even after several requests made by the Appellant/ husband. Then, after two years, HMOP.No.71 of 2008 was filed, seeking divorce, on the grounds of mental cruelty and desertion. Two years thereafter, the Respondent/ wife has filed HMOP.No.52 of 2010, seeking restitution of conjugal rights. The Appellant/ husband has let in evidence on the above averments.

11. In normal circumstances, a wife is expected to be with the family of her husband after the marriage and the wife becomes an integral part of the family of the husband and normally, without any justifiable strong reason, she would never insist that her husband should get separated from the family and live only with her. In the case on hand, even after setting up a separate accommodation as per the wishes of the Respondent/ wife, the Respondent/ wife left the husband and lived separately for more than two years, without any valid reasons.



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12. In the case on hand, it is seen from the impugned order of the Trial Court that though the Trial Court has found that the frequent visit by the Respondent/ wife to her parents and leaving the matrimonial home frequently would amount to mental agony and cruelty and the Respondent/ wife left the matrimonial home even before two years and living separately, it erred in coming to the conclusion that it would not amount to cruelty and desertion, without following the settled law and proceeded to dismiss both the petitions. Similarly, the lower appellate court also, though found that the wife lived separately for more than two years, did not consider the said aspect and the evidence let in by both the parties in a proper manner and erroneously, while dismissing the Petition for divorce, allowed the Petition for restitution of conjugal rights.

13. Further, at this distance period of time, i.e. about more than 19 years from the date of marriage, it cannot be construed that there will be any possibility for reunion of the parties. The wife had left the matrimonial home and lived separately, on her own, without any valid reasons and it would amount to deliberate desertion and mental cruelty. The wife has also not preferred any appeal against the order of the Trial Court. Hence, it is to be held that in spite of order of restitution of conjugal rights, the Respondent/ wife has not properly explained the steps if any for joining the husband. For the above said reasons and discussions, this Civil Miscellaneous Second Appeal is liable to be allowed.

14. In the result, this Civil Miscellaneous Second Appeal is allowed. The



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impugned judgement of both the courts below are set aside. The Appellant/
husband is granted a decree of divorce and accordingly, HMOP.No.71 of
2008 is allowed as prayed for. HMOP.No.52 of 2010 filed by the wife
seeking for restitution of conjugal rights is dismissed. No costs.

24.07.2023

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Srcm

To

1. III Additional District Court, Salem
2. The Sub Court, Mettur.
3. The Record Keeper, VR Section, High Court, Madras



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A.A.NAKKIRAN, J.

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Pre-Delivery Judgement in
CMSA.No.8 of 2018

24.07.2023