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C.M.S.A. No.5 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 13.09.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Civil Miscellaneous Second Appeal No.5 of 2021
and
C.M.P No.5 of 2021

Sarala

... Appellant

Vs.

Srinivasan

... Respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 9 of Hindu Marriage Act read with Section 100 of C.P.C., to set aside the judgment and decree dated 19.09.2019 made in HMCMA No.3 of 2018 on the file of the II Additional District and Sessions Judge, Vellore at Ranipet, Vellore District, modifying the Judgment and decree dated 15.12.2017 on the file of Sub Ordinate Judge, Ranipet, Vellore District, made in HMOP No. 210 of 2013.

For Appellant : M/s.T.Vijayalakshmi

For Respondent : Mr.P.Mani



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JUDGMENT

This Civil Miscellaneous Second Appeal is filed to set aside the judgment and decree dated 19.09.2019 made in HMCMA No.3 of 2018 on the file of the II Additional District and Sessions Judge, Vellore at Ranipet, Vellore District, modifying the Judgment and decree dated 15.12.2017 on the file of Sub Ordinate Judge, Ranipet, Vellore District, made in HMOP No. 210 of 2013.

2. The appellant is the wife and the respondent is the husband.

3. The marriage between the appellant and the respondent was solemnised on 06.05.2011 according to the Hindu Religious Marriage Rites and customs. The marriage is an arranged marriage. After the marriage, they settled at Thenandiyalam Village along with the parents of the respondent/husband and the respondent/husband was working at Ambur. Subsequently, the appellant/wife left the matrimonial home and not joined the respondent/husband even after the birth of the child on 25.02.2012. Several attempts were made by the respondent/husband requesting the



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appellant/wife to come and join the respondent/husband by letters dated 29.10.2012, 18.11.2012 and 01.07.2013. But the same were not materialized. Legal notice was also issued on 02.10.2013 though counsel. But there was no effect for the legal notice. Hence, the husband had filed a petition in HMOP No. 210 of 2013, before the file of Subordinate Judge, Ranipet, Vellore District, under Section 9 of the Hindu Marriage Act, 1955, to direct the wife to come and live with him in his marital home. The learned Subordinate Judge, after enquiry allowed the petition filed by the husband for restitution of conjugal rights and directed the wife to come and live with the husband along with the child within 2 months from the date of the order and also imposed a condition that the husband shall shift his residence to Walaja along with his parents and in case, his parents are not willing to come, the husband shall live with his wife and child at Walaja and visit his parents daily. Aggrieved by the said condition, the husband filed an appeal in HMCMA No.3 of 2018 before the II Additional District and Sessions Judge, Vellore at Ranipet, Vellore District. The learned District and Sessions Judge, on hearing the same, allowed the appeal and removed the condition of shifting the house to Walaja, imposed by the Subordinate Judge and directed the wife to go and live with the husband.



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3. Now challenging the order of the lower appellate Court, the wife has filed the present second appeal raising the following substantial question of law;

Is the Lower Appellate Court justified in ordering restitution of conjugal rights, more so when the appellant has proved reasonable cause to leave the matrimonial home as per Section 9 of the Hindu Marriage Act, 1955?

4. The learned counsel for the wife submitted that the marriage between the parties took place on 06.05.2011 and after the marriage, they were living together in the matrimonial home. The learned counsel for the appellant submitted that the husband did not take good care of his wife and due to his indifferent attitude, the wife left the matrimonial home. The learned counsel further submitted that due to the indifferent attitude of the husband, the wife is not willing to live with the husband in his village and therefore, the trial Court imposed the said condition, whereas, the Appellate Court failed to appreciate the same and removed the said conditions. The



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husband is having illegal intimacy with some other lady in his village and therefore, the wife is not ready to go and live with the husband in his village. But the wife is ready to live with the husband in any place, other than his Village, like Walajah.

5. The learned counsel for the husband submitted that there is no pleading regarding illegal intimacy and there is no evidence to substantiate the said allegation. The learned counsel would further submit that the husband has to look after his aged parents and economically, he is not in a position to set up an independent house out of his village as stated by the wife. However, he is ready to accept his wife if she is willing to live with him in his village along with his parents.

6. Heard the learned counsel for the appellant and the learned counsel for the respondent and perused the materials available on record.

7. This Second Appeal is filed under Section 100 C.P.C. First of all, the wife, who has filed the present second appeal, has to establish that substantial question of law exists to be answered by this Court. However, a reading of the entire materials shows that there is no substantial question of



law exists. The findings of both the Courts below are only factual findings and there is no perversity in the appreciation of evidence by the Courts below which would lead to formulate substantial question of law.

8. As stated by the learned counsel for the respondent/husband, there is no pleading that the respondent/husband was having illegal intimacy with other lady in his village and the parents of the respondent/husband were supporting him. Therefore, in the absence of any pleading and materials, both the Courts below have clearly directed the appellant/wife to live with the respondent/husband. Though the Subordinate Judge imposed the condition of setting up a house in Walajah, the lower appellate Court rightly removed the said condition and directed the appellante/wife to live with the respondent/husband.

9. On a careful perusal of the entire materials, this Court finds that there is no substantial question of law to be formulated by this Court. Therefore, the Second Appeal is liable to be dismissed.



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10. Accordingly, this Civil Miscellaneous Second Appeal is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

To

1. The II Additional District and Sessions Judge,
Vellore at Ranipet

2. The Sub Ordinate Judge, Ranipet

3. The Section Officer,
VR Section,
High Court,
Madras.



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P.VELMURUGAN, J.

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