



C.M.S.A.No.18 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2023

CORAM :

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.S.A.No.18 of 2020

K.Balaji

... Appellant

Vs.

Vijayasanthi

... Respondent

Civil Miscellaneous Second Appeal filed under Section 100 r/w 106 of Civil Procedure Code to set aside the judgment and decree dated 16.12.2019 passed in C.M.A.No.8 of 2017 on the file of the learned I Additional District and Sessions Judge, Cuddalore, confirming the fair order and decretal order dated 23.12.2016 passed in H.M.O.P.No.21 of 2013, on the file of the learned Subordinate Judge of Panruti.

For Appellant : Mr.R.Gururaj
For Respondent : No appearance

J U D G M E N T

Challenging judgment dated 16.12.2019 passed in C.M.A.No.8 of 2017 by the learned I Additional District and Sessions Judge, Cuddalore, confirming the order dated 23.12.2016 passed in H.M.O.P.No.21 of 2013,



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on the file of the Subordinate Court, Panruti, the present appeal has been filed.

2. The appellant is the husband, who has filed divorce against her wife on the ground of cruelty and desertion under Sections 13(1)(a) and (1)(b) of the Hindu Marriage Act, 1955 before the learned Subordinate Judge, Panruti in H.M.O.P.No.21 of 2013 and the said petition was dismissed by the trial Court. As against the said order, the appellant herein has preferred C.M.A.No.8 of 2017 before the learned I Additional District and Sessions Judge, Cuddalore in C.M.A.No.8 of 2017 and the same was dismissed. Aggrieved over the same, the husband has filed the present second appeal before this Court.

3. This Court formulated the substantial question of law :

(i) Were not the lower Courts at gross error in not finding that the respondent had deserted the appellant even though she is living away since 2010 without any effort at restitution ?



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(ii) Did not the lower Courts grossly err in failing

WEB COPY to see that not living with the husband for several years, not allowing to father to see the child and enjoy fatherhood ?

(iii) Did not the lower Courts commit error in

failing to see that the parties have reached a level that the marriage has broken irretrievably ?

4. The learned counsel for the appellant would submit that the respondent left the matrimonial home voluntarily without any valid reason. The respondent went to her parental home for giving birth to a child, even after giving birth to the child, she did not return back to the matrimonial home and she was living with her parents, which clearly shows that the respondent deserted her husband. Though the appellant took much efforts to bring her back to the matrimonial home, she did not response to the same. He further submitted that she has not informed about the birth of the child and also suppressing her employment and other activities, she had filed maintenance case, in which, she has clearly stated that she is living separately, which itself clearly shows that the respondent is living separately



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from the appellant, since 2010. Both the Courts below without appreciating the fact that the respondent is living separately since 2010 and the adamant attitude of the respondent dismissed the cases, which warrants interference by this Court.

5. Heard the learned counsel for the appellant and perused the records. There is no representation for the respondent.

6. Admittedly the marriage between the appellant and respondent is not in dispute and paternity of the child is also not in dispute. The only allegation is that the respondent/wife left the matrimonial home voluntarily without any valid reason and also caused mental cruelty to the appellant.

7. In order to prove the contention of the appellant, the appellant examined himself as P.W.1 and no other independent witness was examined. On the side of the respondent, the respondent examined herself as R.W.1, and one Velmurugan, who is the neighbour of the respondent



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was examined as RW2 and they denied all the allegations levelled against her by the appellant in the said petition for divorce. The appellant herein has filed the petition on the ground of cruelty and desertion, even though the mental cruelty of the respondent cannot be proved through the third party evidence. However, the appellant has stated that after the marriage, the respondent was living away from the appellant, she went to her parental home to give birth to a child and after giving birth to the child she did not return back to her matrimonial home. Though the respondent has admitted that she is ready to go with her husband if he customarily invites her to the matrimonial home, there is no evidence to prove that after giving birth to the child, the appellant went to her parents house and customarily invited her back to his home.

8. Except the evidence of the appellant, none of the witnesses were examined to prove what steps he has taken to bring the respondent back to her matrimonial home.

9. Considering the above facts and circumstances, this Court as



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appellate Court, re-appreciated the entire materials and this Court finds that all the findings are based on factual aspects, there was no substantial questions of law and irretrievable break down is not a ground for divorce. Only the Hon'ble Supreme Court alone can pass divorce on the ground of irretrievable break down of marriage. The trial Court has no jurisdiction to grant divorce on that ground, all the substantial question of law are answered, accordingly. This Court also finds that there is no perversity in appreciation of the evidence and the findings given by both the Courts below.

10. This Civil Miscellaneous Second Appeal is dismissed, accordingly. There shall be no order as to costs.

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Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To

1. The I Additional District and Sessions Judge,
Cuddalore.
2. The Subordinate Judge,
Panruti.



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P.VELMURUGAN, J.

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