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C.M.S.A.No.61 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2023

CORAM :

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.S.A. No. 61 of 2021

S.Gunasekaran

... Appellant

Vs.

Hemalatha

... Respondent

Civil Miscellaneous Second Appeal filed under Section 100 of Civil Procedure Code to set aside the order and decree dated 03.02.2021 made in H.M.C.M.A.No.10 of 2018 on the file of the II Additional District Judge, Vellore @ Ranipet in confirming the order and decree dated 07.08.2017 made in H.M.O.P.No.33 of 2015 on the file of the Sub Court, Arakkonam.

For Appellant : Mr.A.Gouthaman

For Respondent : No appearance

J U D G M E N T

This appeal has been filed against judgment dated 03.02.2021 made in H.M.C.M.A.No.10 of 2018 on the file of the II Additional District



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Court, Vellore @ Ranipet confirming the order and decree dated 07.08.2017 made in H.M.O.P.No.33 of 2015 on the file of the Sub Court, Arakkonam.

2.The marriage between the appellant/husband and the respondent/wife was solemnised on 07.12.1998 as per Hindu rites and customs and out of their wedlock a female child was born on 10.11.2001. Due to some misunderstanding between them, they got separated. Thereafter, the appellant/husband filed a divorce petition in H.M.O.P.No.33 of 2015 on the file of the Sub Court, Arakkonam under Section 13(ia) of Hindu Marriage Act, 1955 on the ground of cruelty and the said petition was dismissed. Then, he preferred an appeal in H.M.C.M.A.No.10 of 2018 on the file of the II Additional District Court, Vellore @ Ranipet, which also came to be dismissed. Aggrieved by the same, the present second appeal has been preferred by the appellant/husband.

3. At the time of admission of the appeal, the following substantial question of law was formulated by this Court :

"Whether the Courts below were right in not



granting a decree of divorce under the ground of marriage between the appellant and respondent was irretrievably break down because they were living separately for more than two decades ?"

4. The learned counsel for the appellant/husband submitted that the respondent/wife voluntarily left the matrimonial home without any valid reasons. The respondent frequently, picked up unnecessary quarrel with the appellant and his parents. Whenever, the appellant advised her, she scolded them with filthy language and left the matrimonial home. On 10.11.2001, she begotten a child. Even the birth of the child was also not informed to them. Subsequently, she did not return back to her matrimonial home, despite all efforts were taken by the appellant. The appellant/husband and the respondent/wife were residing separately, from 2001 onwards. Hence, the appellant filed divorce petition on the ground of cruelty.

5. The learned counsel for the appellant further submitted that in order to prove the case of the appellant, before the Court below, the appellant examined himself as P.W.1 and two of his relatives were



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examined as P.W.2 and P.W.3. Before the Court below, the appellant has substantiated his allegations levelled in the petition, however, the respondent/wife did not turn up and no oral and documentary evidence was produced to prove her case. He further submitted that after the separation, the respondent did not come back to her matrimonial home and also she did not file any petition seeking restitution of conjugal rights or maintenance. Further, now the child grown up and got married. Even the marriage of his daughter was not informed to him. They are living separately from 2001 onwards. Such long and continuous separation between them amounted to mental cruelty, and hence, on this ground itself divorce may be granted. However, both the Courts below failed to appreciate the entire materials and held that the allegations levelled in the petition have not been substantiated and proved by the appellant in the manner known to law and dismissed the petitions. He further submitted that more than two decades they were living separately and the marriage between the appellant and the respondent was break down irretrievably.

6. In support of his contention, the learned counsel for the



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appellant placed reliance on the judgment of the Apex Court in the case of

Poonam Vs. Surender Kumar (Civil Appeal No.9545 of 2010) reported in

MANU/SC/1098/2021 and the judgment of this Court in the case of

G.Kesavan Vs. P.Visalakshi (C.M.S.A.No.29 of 2010) reported in

MANU/TN/0496/2018.

7. Heard the learned counsel for the appellant and perused the materials available on record. Despite service of notice, there is no representation for the respondent either in person or through counsel.

8. Admittedly, the appellant/husband filed the divorce petition on the ground of cruelty, which came to be dismissed and hence, he preferred the appeal, which also came to be dismissed. Now, the appellant is before this Court.

9. The main contention raised by the learned counsel for the appellant/husband is that the respondent/wife herself admitted in her counter statement that she left her matrimonial home in the year 2003 and thereafter,



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she did not turn up. They are living separately for more than two decades, which would amount to mental cruelty irretrievably and their marriage break down.

10. On a perusal of the records, it is seen that to prove the cruelty caused by the respondent/wife, the appellant/husband produced Ex.P9, Ex.P10, Ex.P12 and Ex.P13, however, he has not produced any copy of the complaint and what steps were taken to register the complaint against the respondent. Even the appellant has stated that the respondent filed a complaint against him for filing divorce petition against her. There is no materials produced to substantiate the allegations made by the appellant. In the counter, the respondent/wife has stated that she was driven from the matrimonial home and the said fact was not denied by the appellant/husband. It is the contention of the appellant that he had made attempts to bring her back to the matrimonial home with the help of P.W.2 and P.W.3, however, both the Courts below pointed out that there are contradictions in the evidence of P.W.1, P.W.2 and P.W.3.



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11.The main contention raised by the learned counsel for the appellant that long and continuous separation amounted to mental cruelty and the marriage between the parties had become dead and there was no purpose in continuing the legal bond between parties and therefore, this Court may grant decree of divorce under the ground of marriage between the appellant and respondent was irretrievably break down. However, it is to be noted that the Hon'ble Supreme Court is only having powers to invoke the extraordinary jurisdiction under Article 142 of Constitution of India and dissolve the marriage between the parties on account of irretrievably break down the marriage. Either the trial Court or the appellate Court have no powers to dissolve the marriage on account of irretrievably break down the marriage. The Substantial question of law is answered, accordingly.

12. The first appellate Court, as a final Court of fact findings re-appreciates the entire materials and give independent findings. However, in the second appeal, the findings are based on the substantial question of law.



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13. In view of the above facts and circumstances, this Court is of the opinion that both the Courts below have no power to dissolve the marriage between the appellant and respondent and thus, rightly dismissed the petitions. This Court finds that there is no perversity in the findings given by the both the Courts below. There is no substantial question of law and the substantial question of law formulated by this Court is answered accordingly. Therefore, there is no merit in the appeal and the same is liable to be dismissed.

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

01.09.2023

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

- 1.The II Additional District Judge,
Vellore @ Ranipet.
- 2.The Sub Court,
Arakkonam.
- 3.The Section Officer,
V.R.Section,
High Court, Madras.



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P.VELMURUGAN, J.

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