



C.M.S.A.No.20 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Civil Miscellaneous Second Appeal No.20 of 2019
and
C.M.P. No.17099 of 2019

Amudha

... Appellant

-Versus-

Chakaravarthi

... Respondent

Prayer:- This Civil Miscellaneous Second Appeal is filed under Section 28 of the Hindu Marriage Act read with Section 100 of the Code of Civil Procedure to set aside the fair order and decretal order dated 28.02.2019 passed in C.M.A. No.31 of 2017 on the file of the III Additional District and Sessions Judge, Cuddalore at Vridhachalam and dismissing the appeal, by confirming the fair order and decretal order dated 01.09.2017 passed in H.M.O.P.No.57 of 2016 on the file of the Subordinate Court of Neyveli.

For Appellant : Mr.R.Gururaj

For Respondent : Mr.A.V.Raja



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JUDGMENT

This Civil Miscellaneous Second Appeal is filed to set aside the fair order and decretal order dated 28.02.2019 passed in C.M.A. No.31 of 2017 on the file of the III Additional District and Sessions Judge, Cuddalore at Vriddhachalam, dismissing the appeal by confirming the fair and decretal orders dated 01.09.2017 passed in H.M.O.P.No.57 of 2016 on the file of the Subordinate Judge of Neyveli.

2. The brief facts leading to the filing of the present second appeal are as follows:-

The appellant herein is the wife. The respondent herein is the husband. The husband had filed a petition for divorce in HMOP No.57 of 2016 on the file of Subordinate Court, Neyveli. The said petition was allowed and divorce was granted by order dated 01.09.2017. Challenging the said order of divorce ordered by the learned Subordinate Judge, Neyveli, the wife filed C.M.A.No.31 of 2017 on the file of the III Additional District and Sessions Court, Cuddalore at Vrithachalam. The learned III Additional District and Sessions Judge, after hearing the appeal, dismissed the appeal



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and confirmed the Judgment and decree of divorce passed by the Subordinate Judge. Again challenging the said order of the First Appellate Court, the present Civil Miscellaneous Second Appeal has been filed by the wife.

3. The learned counsel for the appellant submitted that the respondent is the husband of the appellant. There was a demand of dowry by the respondent/husband and that the respondent/husband was having illegal intimacy with his own brother's wife and that was the reason for the appellant/wife to leave the matrimonial home. The appellant/wife had filed a complaint for demand of dowry. Subsequently, after investigation, charge sheet was filed and the case was taken on file in C.C.No.393 of 2007 on the file of the Judicial Magistrate, Neyveli. Though the said case was subsequently ended in acquittal, mere acquittal from a criminal case, may not be a ground to disbelieve the evidence of the appellant/wife. Further, he submitted that, without any valid reason, divorce cannot be granted. Granting of divorce is not a routine course as a matter of right and the person who seeks divorce should establish the grounds with valid materials



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in the manner known to law. Both the Courts below have failed to appreciate the same. He also submitted that the appellant/wife had filed a suit in O.S.No.32 of 2015 on the file of Subordinate Court, Neyveli, for maintenance. The trial Court had granted maintenance of Rs.5,000/- per month to the appellant/wife by order dated 05.10.2016. Challenging the same, the respondent/husband had filed an appeal before the III Additional District and Sessions Judge, Cuddalore at Vrithachalam in A.S.No.74 of 2016. The First Appellate Court only modified the quantum of maintenance from Rs.5,000/- per month to Rs.4,000/- per month by order dated 18.06.2018 and it attained finality as the respondent/husband has not challenged the order of maintenance.

4. When divorce was granted on the ground of desertion without any valid reason, it is settled proposition of law that the wife who had deserted the husband without any valid reason, is not entitled to get maintenance. But both the Courts below cannot traverse together. When the husband got divorce on the ground of desertion, deserting the husband without any valid reason, the wife is not entitled to get any maintenance.



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5. In the maintenance case, the trial Court has granted maintenance to the wife stating that the husband had not proved the desertion. Though it was challenged before the First Appellate Court, subsequently it attained finality only with modification, which was not further challenged. Therefore, the maintenance case has attained finality. Under these circumstance, this Court finds that there is a substantial question of law that when the wife had obtained maintenance on the ground that the husband had not proved the desertion that the wife had deserted him without any valid reason, whether divorce can be granted on the ground that the wife deserted the husband.

6. It is the contention of the learned counsel for the respondent/husband that the trial Court, in the maintenance case has observed that the wife had left the matrimonial home without any valid reason. However, no such finding is given. Even if such a finding is given, the wife who left the matrimonial home without any valid reason, is not entitled to get maintenance. Though the respondent/husband had challenged the order of maintenance passed by the Subordinate Judge, by filing an



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appeal in A.S.No.74 of 2016 before the III Additional District and Sessions Judge, Cuddalore at Vrithachalam, the learned III Additional District and Sessions Judge only modified the quantum of maintenance amount and that no further appeal was filed against the said findings, whereas, the wife proved that she is entitled to get maintenance and she has also proved that she left the matrimonial home only with valid reasons that the husband demanded dowry and he was leading immoral life with his own brother's wife. Therefore, under these circumstances, the respondent/husband is not entitled to get divorce on the ground of desertion. Further, though cruelty is stated to have been committed by the respondent/husband, that has not been substantiated.

7. Therefore, considering the facts and circumstances of the case and the appellant/wife has given valid reasons that there was a demand of dowry and her husband/respondent was leading immoral life by having illegal intimacy with his own brother's wife in the same house which is the cause for the appellant/wife to leave the matrimonial home by deserting her husband and that there is no further appeal filed against the findings of the



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First Appellate Court in the maintenance case in A.S.No.74 of 2016 on the file of the the III Additional District and Sessions Judge, Cuddalore at Vrithachalam, this Court finds that both the Courts below have failed to consider the explanation under Section 13 of the Hindu Marriage Act.

8. Though the trial Court as well as the First Appellate Court had granted divorce on the ground of desertion, they failed to see the mandatory requirement that mere desertion is not a sole ground for grant of divorce and the husband has to prove that the wife deserted him without any valid reason. In this case, the appellant/wife has given valid reasons for deserting the respondent/husband as stated above. Further, criminal case was also filed against the respondent/husband. Though it ended in acquittal on the ground of benefit of doubt as if, there was no demand of dowry and a false complaint was given against the respondent/husband, regarding the said findings, the neither the appellant/wife nor the State has filed any appeal.

9. Under the above circumstances, this Courts finds that the reasons given by the First Appellate Court for granting divorce, are perverse. The



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finding of both the Courts are without any valid reason and the reasons given by both the Courts are not legally sustainable. Therefore, for the reasons stated above, the substantial question of law is answered accordingly.

10. Both the judgments and decree of divorce granted by the learned Subordinate Judge of Neyveli in H.M.O.P.No.57 of 2016 dated 01.09.2017 and confirmed by the learned III Additional District and Sessions Judge, Cuddalore at Vriddhachalam, in C.M.A. No.31 of 2017 dated 28.02.2019, are set aside.

11. Accordingly, this Civil Miscellaneous Second Appeal is allowed. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

20.07.2023

Index : Yes / No
Speaking Order: Yes/No
Neutral Citation: Yes/No

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To

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1. The III Additional District and Sessions Judge,
Cuddalore at Vriddhachalam
2. The Subordinate Judge, Neyveli.
3. The Section Officer,
VR Section,
High Court,
Madras.



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P.VELMURUGAN. J.

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