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C.M.S.A.No.55 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2023

CORAM :

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.S.A. No. 55 of 2021

and

C.M.P.No.9577 of 2021

E.M.Saravanan

... Appellant

Vs.

S.Lalitha

... Respondent

Civil Miscellaneous Second Appeal filed under Section 13(1)(ia) of Hindu Marriage Act read with 100 C.P.C to set aside the judgment and decree passed in C.M.A.No.21 of 2016 dated 31.01.2020 on the file of the V Additional District and Sessions Judge, Coimbatore in reversing the fair order and decree passed in H.M.O.P.No.24 of 2012 dated 23.06.2016 on the file of the Subordinate Judge, Pollachi.

For Appellant : Mr.M.Mohamed Riyaz

For Respondent : No appearance

J U D G M E N T

The present appeal has been filed against the judgment and decree dated 31.01.2020 passed in C.M.A.No.21 of 2016 on the file of the



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V Additional District and Sessions Court, Coimbatore, in reversing the fair order and decree dated 23.06.2016 passed in H.M.O.P.No.24 of 2012 on the file of the Subordinate Court, Pollachi.

2. The marriage between the appellant/husband and the respondent/wife was solemnised on 08.06.1997 as per Hindu rites and customs and they have begotten a boy child and girl child. Due to some misunderstanding between them, they got separated. Thereafter, the appellant/husband filed a divorce petition in H.M.O.P.No.24 of 2012 on the file of the Subordinate Court, Pollachi under Section 13(1) (ia) of the Hindu Marriage Act, 1955, for dissolution of marriage and the said petition was allowed. Challenging the same, the respondent/wife filed an appeal in C.M.A.No.21 of 2016 and also I.A.No.No.1 of 2019 under Order 41 Rule 27 C.P.C for adducing additional evidence by producing petition mentioned documents before the learned V Additional District and Sessions Judge, Coimbatore. After appreciating the entire materials, the learned Sessions Judge allowed the appeal by setting aside the order of the Court below and also closed the said interlocutory application. Aggrieved by the same, the



present second appeal has been preferred by the appellant/husband by raising the following substantial question of laws :

"a) Whether First Appellate Court was right in holding that the appellant is not entitled for dissolution of marriage ?

b) Whether First Appellate Court was right in ignoring the settled principles of law as held by this Hon'ble Court and Supreme Court of India ?

c) Whether First Appellate Court was right in allowing the appeal, when respondent herein clearly deposed in her cross examination that she is willing to give divorce to her husband ?

d) Whether the order in appeal is liable to be set aside on the ground of want of consideration of relevant facts such as there is no likelihood of reunion and already there is long period of desertion ?"

3. The learned counsel for the appellant/husband submitted that the respondent/wife left the matrimonial home without any valid reason and they got separated for a long period and the same was admitted by the respondent/wife and she is also ready for dissolution of marriage and there is no possibility for re-union between them. However, the lower Appellate



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Court failed to consider the legal principles laid down by the Hon'ble Supreme Court that the marriage between the parties is irretrievably broke down and it is also a valid ground for divorce and the lower appellate Court allowed the appeal and set aside the order of the Court below. The learned counsel for the appellant further submitted that, while deposing before the Court below, both the parties admitted that they are living separately for a long time and such a long and continuous separation between them amounts to mental cruelty, and hence, on this ground itself, divorce may be granted.

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

5. Despite service of notice, there is no representation for the respondent/wife either in person or through a counsel.

6. On a perusal of the records, it is seen that the allegation raised by the appellant/husband is that, after the birth of children, the respondent/wife developed illicit relationship with one Abdul Kabur, who is



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the friend of the appellant and she started to quarrel with the appellant frequently. Further, the respondent refused to take care of the appellant's mother. The further allegation of the appellant is that, as he is working as a Driver in the Tamil Nadu Electricity Board, the respondent tried to kill him four or five times, in order to get job as a legal heir of the appellant. The appellant made a serious allegation of adultery and also went to the extent of making an allegation that the respondent made an attempt to murder him. Unfortunately, to prove the same, except Ex.P1/Family Card, Ex.P2/Identity card of the appellant, Ex.P3 and Ex.P4/birth certificates of the children, Ex.P5/Notice and Ex.P6/Reply notice, no other documentary evidence has been produced and no other independent witness was examined. It is only an apprehension of the appellant. The respondent/wife also denied the allegations levelled by the appellant and it is the bounden duty of the appellant to prove the allegations levelled in the petition filed for divorce.

7. The main contention raised by the learned counsel for the appellant is that long and continuous separation amounts to mental cruelty and the marriage between the parties had become "dead" and there was no



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purpose in continuing the legal bond between parties and therefore, this

Court may grant decree of divorce on the ground of irretrievable break down of marriage between the appellant and respondent. 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 irretrievable break down of the marriage. The lower appellate Court has rightly allowed the appeal by setting aside the order of the Court below.

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

9. In the case on hand, there was no materials, placed before the trial Court and the appellate Court. Had the materials been placed before the Courts below, and if the same were not re-appreciated by the lower appellate Court, it leads to substantial question of law and this Court can answer for the same. On a perusal of the entire materials, this Court does



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not find any substantial question of law raised by the appellant in the grounds of appeal and the same are based on the factual aspects.

10. In view of the above facts and circumstances, this Court finds that there is no perversity in the findings given by the lower appellate Court. The substantial questions of law are answered accordingly. There is no merit in the second appeal and the same is liable to be dismissed.

11. This Civil Miscellaneous Second Appeal is dismissed, accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

28.08.2023

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

- 1.The V Additional District and Sessions Judge,
Coimbatore
- 2.The Subordinate Judge,
Pollachi.
- 3.The Section Officer,
V.R.Section,
High Court, Madras.



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P.VELMURUGAN, J.,

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