



C.M.S.A(MD)No.25 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 09.03.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.S.A(MD)No.25 of 2016

N.Ilavarasan

... Petitioner/ Appellant /
Appellant

Vs.

Indira

... Respondent / Respondent/
Respondent

PRAYER : This Civil Miscellaneous Second Appeal is filed under Section 28 of Hindu Marriage Act, 1955 read with Section 100 of Code of Civil Procedure, to set aside the judgment and decree dated 23.03.2015 made in C.M.A.No.23 of 2014, on the file of III Additional District Court, Thanjavur confirming the Judgment and decree dated 04.04.2014 made in H.M.O.P No.20 of 2009, on the file of the Subordinate Judge, Pattukottai.

For Appellant : Mr.P.Arun Jayatram

For Respondent : Mr.K.Kumaravel



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JUDGMENT

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The present Civil Miscellaneous Second Appeal has been filed by the husband challenging the concurrent findings of the Courts below, dismissing his application for grant of divorce on the ground of desertion and cruelty.

2. According to the learned counsel appearing for the husband, the wife had deserted him on 29.01.2008 and sent a legal notice on 05.08.2008. The Trial Court as well as the Appellate Court have arrived at a categorical finding that the appellant/husband has not placed on record any specific instance of cruelty that was meted out by the wife to the husband. In fact, the petitioner and the respondent have been residing only under the same roof right from inception and the same is not in dispute.

3. The Trial Court as well as the Appellate Court have arrived at a finding that the couple got married in the year 1971 and they were living together for more than 35 years without any dispute. Therefore, the allegations of cruelty on the part of the husband for the past 30 years is unbelievable. The Trial Court as well as the Appellate Court have also arrived at a finding that the husband and



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wife are living in the same address and the wife had produced Ex.R.11 and Ex.R.

12 to establish the fact that the husband and wife are residing in the same address. Therefore, the question of alleged desertion by the wife has been falsified by production of Ex.R.11 and Ex.R.12.

4. The first Appellate Court has also arrived at a specific finding that the husband is not able to place on record any specific instance relating to cruelty. The Appellate Court has also confirmed the finding that the husband and wife are residing under the same roof and therefore, the ground of alleged desertion has not been proved by the husband. Challenging the said concurrent findings, the Civil Miscellaneous Second Appeal has been filed by the husband.

5. The Civil Miscellaneous Second Appeal has been admitted on the following substantial questions of law:

“A. Whether the judgment and decree of the Lower Appellate Court is in conformity with Order 41 Rule 31 of C.P.C. wherein the Lower Appellate Court has not framed necessary issues for determination and failed to render finding on each issue separately?



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B. Whether the appellant is entitled for divorce on the ground of cruelty as well as desertion?

C. Whether the finding rendered by the Lower Appellate Court in the judgment will justify the conclusion?

D. Is not finding of the Lower Appellate Court has been on mere surmise and conjective without any legal basis?”

6. As far as the 1st substantial question of law is concerned, it is settled position of law that the first Appellate Court need not frame specific issues, but it is enough to answer all the issues that were raised by the Trial Court. In the present case, the first Appellate Court has framed the issue whether the judgment and decree of the Trial Court is sustainable or it is liable to be set aside or not. The first Appellate Court has considered the issue relating to the desertion as well as cruelty and has arrived at a specific finding that the appellant has not proved the desertion as well as the cruelty committed by the wife. Therefore, I do not find there is any substance in the 1st substantial question of law. As far as the other substantial questions of law are concerned, there is a concurrent finding with regard to the fact that the husband and wife are residing under the same roof and the husband has not proved the desertion in whatever manner.



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7. The Court has also arrived at a concurrent finding that the husband has not pointed out any specific instance either in pleading or in the evidence to establish that the wife has committed cruelty. Therefore, the other questions of law are merely factual issues which cannot be considered as a substantial question of law warranting interference by this Court under Section 100 of Code of Civil Procedure.

8. Therefore, the Civil Miscellaneous Second Appeal stands dismissed.

No costs.

09.03.2023

Index : Yes / No
Internet : Yes / No
Nsr

To

- 1.The Additional District Court - III,
Thanjavur.
- 2.The Subordinate Judge,
Pattukottai.
- 3.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

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R.VIJAYAKUMAR, J.

Nsr

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