



C.M.A.Nos.1521 and 1522 of 2008

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**C.M.A.Nos.1521 and 1522 of 2008
and M.P.No.1 of 2008**

J.Murugan

... Appellant in both appeals

Vs.

M.Sumathi

... Respondent in both appeals

COMMON PRAYER : Civil Miscellaneous Appeals filed under Section 28 of the Hindu Marriage Act, 1955, against the common judgment and decree dated 31.01.2007 passed in H.M.O.P.Nos.166 of 2003 and 114 of 2004 on the file of the Additional District Court (Fast Track Court No.III), Poonamallee.

In both appeals

For Appellant : Mr.S.Ananth

For Respondent : Mrs.T.Muthamilselvi



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COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed under Section 28 of the Hindu Marriage Act, 1955, by the appellant/husband, namely J.Murugan against the common judgment passed in H.M.O.P.Nos.114 of 2004 seeking a decree for divorce and H.M.O.P.No.166 of 2003 filed by the respondent/wife for restitution of conjugal rights, by the Additional District Court, Fast Track Court No.III, Poonamallee.

2. Both H.M.O.P.Nos.166 of 2003 and 114 of 2004 were heard together and disposed of by way of a common judgment dated 31.01.2007, wherein, H.M.O.P.No.166 of 2003 filed by the respondent/wife for restitution of conjugal rights is allowed, thereby dismissing H.M.O.P.No.114 of 2004 filed by the appellant/husband, seeking a decree for divorce.

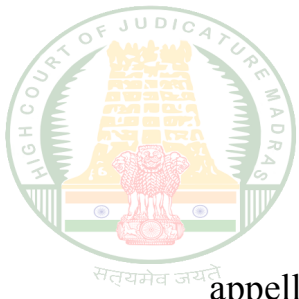


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3. The relationship between the parties is not in dispute. The appellant/husband and the respondent/wife got married on 16.09.1988 at P.R.R. Kalyana Mandapam, Porur, as per the Hindu Rites and Customs and thereafter, they settled matrimonial home at Porur, Chennai, but they lived for an year. Out of wedlock, one male child was born on 05.11.1999 and thereafter, due to disputes and difference of opinion, the respondent/wife left the matrimonial home and both the parties raised claim and counter claim against each other and filed separate original petitions. The husband filed a petition for divorce, whereas, the wife filed a petition for restitution of conjugal rights. Both the petitions were heard together and disposed of by way of a common judgment dated 31.01.2007, wherein, the petition filed by the husband was dismissed and the petition for restitution of conjugal rights filed by the respondent was allowed. Aggrieved by the said judgment, the present appeals have been filed by the appellant/husband.

4. The learned counsel appearing for the appellant submits that the Court below has failed to consider Ex.P1 to Ex.P6 adduced on behalf of the



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appellant and has come to a conclusion on mere presumption. He further submits that the finding rendered by the Court below as if the respondent/wife was forced to attempt suicide only due to the words adverted by the appellant against the respondent was arrived at without going into the facts of the case and thereby, the entire findings arrived by the Tribunal is vitiated. That apart, the discussion made by the Court below against the mother of the appellant who was nothing to do with the incident which led to filing of the present proceedings by the respective parties and in the absence of any evidence to prove the said fact, the judgment rendered by the Court below is vitiated and non-est in law. It is also submitted that the Court below has not taken into consideration the evidence of P.W.2/independent witness before arriving at the conclusion. In such circumstances, in the interest of the parties, the petition filed by the respondent for restitution of conjugal rights ought not to have been allowed and the divorce ought to have been granted.



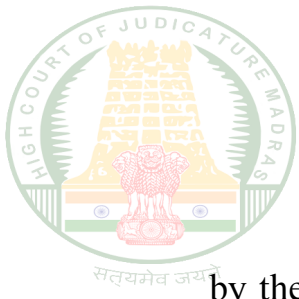
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5. The learned counsel appearing for the respondent submits that the respondent and the appellant had lived happily for a period of one year and after one year of the marriage, the appellant had started quarrelling with the respondent due to ill-advice of his mother and beaten her and refused to live with her. Her son attained the age of 25 years and for the welfare of the son's life, she filed a petition in H.M.O.P.No.166 of 2003 for restitution of conjugal rights, whereas, the appellant has filed a petition in H.M.O.P.No.114 of 2004 seeking divorce. The Trial Court, after considering all the evidence adduced by the parties, allowed the petition filed by the respondent was allowed and dismissed the petition filed by the appellant seeking divorce.

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent.

7. This Court, after carefully considering the submissions made on behalf of both sides and after going through the common judgment passed



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by the Court below, is of the view that the learned trial Judge has come to the conclusion that the decree for restitution of conjugal rights is to be allowed on the basis of the evidence placed before the trial Court. It is not in dispute that there were certain differences between the parties. However, a cruelty alleged by the appellant against the respondent/wife was not proved and that the oral evidence of the witnesses also substantiates that there has been a fair chance of re-union and the Lower Court has recorded that the differences that occurred between the appellant and the respondent was mainly due to intrusion of the mother of the appellant/husband into the family affairs of the appellant and the respondent/wife. The learned Judge has also recorded that though there was an attempt made by the respondent/wife alleging cruelty at the hands of the appellant/husband, the root cause for taking such an extreme stand could be attributed to both the parties, namely, husband and wife and therefore, the learned Judge found that even though there may be some differences and disputes between the parties, still there was a fair chance of reunion. Moreover, since there is a male child born out of wedlock, the future of the child will get affected if a



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decree for divorce is granted. Hence, the Lower Court has dismissed the petition for divorce and allowed the petition for restitution of conjugal rights. This Court is of the view that the Trial Court has gone into the evidence and has recorded the valid reasons for allowing the petition for restitution of conjugal rights and dismissing the petition for divorce. Hence, the common judgment and decree dated 31.01.2007 passed in H.M.O.P.Nos.166 of 2003 and 114 of 2024 by the Additional District Court (Fast Track Court No.III), Poonamallee is hereby confirmed.

8. Accordingly, both the Civil Miscellaneous Appeals fail and are dismissed. There shall be no order as to costs. Connected miscellaneous petition is closed.

13.11.2024

NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No

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To

1. The Additional District Court (Fast Track Court No.III),
Poonamallee.
2. The Section Officer,
V.R. Section,
High Court,
Chennai.



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M.DHANDAPANI, J.

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