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CMA.No.939 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2024

CORAM

**THE HONOURABLE MRS. JUSTICE J. NISHA BANU
&
THE HONOURABLE MR.JUSTICE V. SIVAGNANAM**

C.M.A.No.939 of 2022

N. Madheshwaran ... Appellant

Vs.

Latha @ Chinnaponnu ... Respondent

Civil Miscellaneous Appeal filed under section 19 of Family Court Act against the judgment and decree dated 07.02.2019 made in F.C.O.P.No.487 of 2010 on the file of the Family Court, Salem

For Appellant : Mr. T.S. Vijaya Raghavan

For Respondent : No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed by the Appellant/husband challenging the order passed in FCOP.No.487 of 2010 in and by which, the Family Court Judge, Salem, dismissed the petition filed by the appellant/husband seeking



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divorce on the ground of adultery and cruelty.

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2. The learned counsel appearing for the appellant/husband submitted that the marriage between the appellant and respondent was solemnized on 19.06.1996 and out of their wedlock, three female children and one male child were born. The respondent has often deserted the family of the petitioner and their four children leaving them uncared and the petitioner also came to know that the respondent is having illegal intimacy with one Asaithambi. Hence the appellant filed FCOP.No.487 of 2010 before the Family Court, Salem on the ground of adultery and mental cruelty. The learned Family Judge, Salem dismissed the divorce petition on the ground that the appellant failed to establish adultery and cruelty on the part of the respondent. Against which, the appellant has preferred the present Civil Miscellaneous Appeal.

3. He further submitted that the appellant and the respondent have been living separately for the past 14 years. The appellant has been taking care of the four children born to them and even the children are not ready to go with the respondent and they are not ready to visit their own mother. The respondent filed



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G.O.P.No.6 of 2011 before the Family Court Salem, seeking custody of the children, wherein, all the children were examined by the trial judge. Before the trial judge, all of them have categorically deposed that they do not intend to go with their mother. Based on the wishes of the children, the Family Court dismissed the G.O.P.No.6 of 2011 by recording that the children is not ready to go with their mother.

4. He would further contend that the appellant deserted the respondent in the year 2010 and the appellant herein is struggling to maintain all the four children and both of them were living separately for the past 14 years. In the impugned order itself, the learned trial Judge, in paragraph 6 has observed that in spite of serious efforts of reconciliation between the parties, the parties were unable to arrive at an amicable settlement'. The learned counsel for the appellant would further contend that from the deposition of the children in GOP.No.6 of 2011 before the trial Judge that they are willing to be with their father and not ready to go with their mother and according to them, the children are unwilling to go with their mother. Thus he prayed for allowing of this Civil Miscellaneous Petition by setting aside the order passed in FCOP.No.487 of 2010.



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5. Heard the learned counsel appearing for the appellant and perused the entire materials available on record. Though notice served on the respondent and her name being printed in the cause list, there is no representation for her, today when the matter is called.

6. Perusal of records would go to show that on the ground of cruelty and adultery, the appellant filed a petition for divorce against the respondent in FCOP.No.487 of 2010 and the trial Judge dismissed the divorce petition stating that the appellant failed to establish adultery and cruelty on the part of the respondent. It is the contention of the appellant that the appellant has been living separately for the past 14 years and the children born to them were not ready and willing to go with the respondent as she has often deserted the family of the appellant and their four children and failed to be a dutiful mother. Besides that, during their examination before the court in GOP.No.6 of 2011, the children born to them, have deposed that they are not ready and willing to go with their mother and they want to be with their father and the same was recorded by the trial Judge while dismissing the GOP.No.6 of 2011. That apart, it is seen that the efforts put



in by the trial court for reconciliation between the parties went in vain.

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7. In ***Rakesh Raman Vs. Kavita*** reported in ***AIR 2023 SCC 2144***, the Honourable Supreme Court in paragraph 18, held as follows:-

“18. We have a married couple before us who have barely stayed together as a couple for four years and who have now been living separately for the last 25 years. There is no child out of the wedlock. The matrimonial bond is completely broken and is beyond repair. We have no doubt that this relationship must end as its continuation is causing cruelty on both the sides. The long separation and absence of cohabitation and the two, has to be read as cruelty Under Section 13(1)(ia) of the 1955 Act. We therefore hold that in a given case, such as the one at hand, where the marital relationship has broken down irretrievably, where there is a long separation and absence of cohabitation (as in the present case for the last 25 years), with multiple Court cases between the parties; then continuation of such a marriage would only mean giving sanction to cruelty which each is inflicting on the other. We are also conscious of the fact that a dissolution of this marriage would affect only the two parties as there is no child out of the wedlock.”

In the present case also, there is a long separation, thereby it has to be read as cruelty. Therefore, in the light of above judgment, we are inclined to allow this appeal as the matrimonial bond is completely broken and is beyond repair. On the abovesaid ground also the appellant is entitled to divorce.

8. Taking into consideration that the respondent is not before this court and also the fact that the appellant and the respondent are living separately for the past



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14 years and taking into consideration that the children were also not willing to go with their mother as recorded by the court below in GOP.No.6 of 2011, one can infer that there is irretrievable break down of marriage and there would be no useful purpose in keeping the marriage alive. Hence we are inclined to allow this appeal. Accordingly, the Civil Miscellaneous Appeal is allowed. The judgment and decree passed in FCOP.No.487 of 2010 by the Family Court, Salem is hereby set aside. No costs.

[J.N.B.,J.] [V.S.G.,J.]
05.06.2024

Index: yes/no
Internet:yes/no
msr/nvsri

To
The Judge, Family Court, Salem.

J. NISHA BANU, J.
&
V. SIVAGNANAM, J.



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