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C.M.A.No.2232 of 2019

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED: 19.07.2024

CORAM

THE HONOURABLE **MR. JUSTICE ABDUL QUDDHOSE**

C.M.A.No.2232 of 2019

Balaji

.. Appellant

Vs

Uma Maheswari

.. Respondent

Prayer: This Appeal is filed under Section 28 of the Hindu Marriage Act against the fair and decreetal order passed by the District Court, Karaikal, in M.O.P.No.25 of 2009, dated 14.12.2010.

For Appellant : Mr.A.Arun Babu

For Respondent : Mr.Karthikeyan

JUDGMENT



C.M.A.No.2232 of 2019

WEB COPY
This appeal has been filed by the husband aggrieved by the order dated 14.12.2010 passed by the District Court, Karaikal, in M.O.P.No.25 of 2009, dismissing the petition filed by him under Section 13(i)(ia) of the Hindu Marriage Act, 1955 (in short “the Act”) for the dissolution of the marriage on the ground of cruelty. Under the impugned order, the learned District Judge, Karaikal, has dismissed the petition filed by the appellant/husband on the ground that he has not proved cruelty against his wife/respondent herein.

2. According to the appellant/husband, as seen from the affidavit filed in support of M.O.P.No.25 of 2009, the respondent/wife did not cooperate in the consummation of the marriage. Therefore, according to him, the respondent has caused mental cruelty and hence, he is entitled for a divorce as per the provisions of Section 13(i)(ia) of the Act.

3. On the other hand, the respondent/wife has disputed the allegation of the appellant/husband as seen from the counter affidavit filed by her in M.O.P.No.25 of 2009. She has also denied that there was no consummation of marriage as alleged in the affidavit filed in support of O.P.No.25 of 2009.



C.M.A.No.2232 of 2019

WEB COPY

4. Before the Trial Court, the appellant and the respondent were examined as witness and they have also been cross-examined. Based on the fact that the respondent has not admitted the allegation of the appellant, the Trial Court has come to the conclusion that the appellant has not proved mental cruelty on the part of the respondent. The Trial Court has rightly dismissed the petition filed by the appellant for dissolution of marriage on the ground that none of the allegations levelled by him against the respondent has been proved. The respondent has also categorically denied the allegation levelled by the appellant against her.

5. Even in the cross-examination, she has not admitted that there was no consummation of marriage between the appellant and the respondent and that she had treated the appellant with cruelty. Therefore, necessarily, as the petitioner/appellant herein, duty is cast upon him to prove the serious allegations levelled by him against the respondent/wife for the purpose of getting a decree for dissolution of marriage. Though the appellant alleged that the respondent has demanded Rs.5 lakhs as compensation, still the appellant is keeping all the utensils and gold articles given to him in his house. Had the respondent/wife really



C.M.A.No.2232 of 2019

demanded Rs.5 lakhs as alleged by the appellant/husband, she would have sought for returning back of all the utensils and gold jewels. But, she did not do so.

6. The learned counsel for the appellant drew the attention of this Court to a judgment of the Hon'ble Supreme Court in the case of ***Sivasankaran Vs. Santhimeenal [2022 (15) SCC 742]***. The said decision was rendered by the Hon'ble Supreme Court exercising its power under Article 142 of the Constitution of India, which, this Court is not having. Therefore, the said decision has no applicability to the facts of the instant case.

7. The learned counsel for the appellant also drew the attention of this Court to another decision of Madhya Pradesh High Court in ***Sudepto Saha Vs. Moumita Saha [I (2024) DMC 432 (DB)(MP)]***. The said decision has got no applicability to the facts of the instant case, since, in the instant case, the appellant has not proved through his pleadings and evidence that the respondent has caused mental cruelty upon him. In the case before Madhya Pradesh High Court, cruelty was proved, whereas, in the case on hand, it has not been proved.



C.M.A.No.2232 of 2019

WEB COPY 8. For the foregoing reasons, there is no merit in this appeal and accordingly, the Civil Miscellaneous appeal is dismissed. No Costs.

19.07.2024

Index: yes/no
Neutral citation: yes/no
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To

District Court,
Karaikal.

ABDUL QUDDHOSE,J.

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C.M.A.No.2232 of 2019

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19.07.2024