



C.M.S.A(MD)No.23 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 12.02.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.S.A(MD)No.23 of 2012

V.Chandrasekaran

... Appellant/Respondent
Petitioner

Vs.

Baskara Devi

... Respondent/Appellant
Respondent

Prayer : This Civil Miscellaneous Second Appeal filed under Section 28 of the Hindu Marriage Act, r/w Section 100 of CPC, against the judgment and decree, dated 16.12.2011 passed in C.M.A(H.M)No.32 of 2009 on the file of the Principal District Court, Thoothukudi reversing the judgment and decree, dated 27.04.2009 passed in H.M.O.P.No.92 of 2004 on the file of the Sub Judge, Thoothukudi.

For Appellant : Mr.G.Prabhu Rajadurai

For Respondent : Mr.B.Rajesh Saravanan



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JUDGMENT

This Civil Miscellaneous Second Appeal has been filed by the appellant as against the order passed in C.M.A(H.M)No.32 of 2009 on the file of the Principal District Court, Thoothukudi, wherein the appellant herein has filed a petition in H.M.O.P.No.92 of 2004 before the Sub Judge, Thoothukudi and the same was allowed. As against the order passed by the learned Subordinate Judge, Thoothukudi, the respondent herein has preferred the appeal in C.M.A(H.M)No.32 of 2009 before the Principal District Judge, Thoothukudi and the same was also allowed by setting aside the order of the learned Subordinate Judge. As against the order passed by the Principal District Judge, Thoothukudi, the petitioner in H.M.O.P.No.92 of 2004 and the respondent in the appeal has preferred this Civil Miscellaneous Second Appeal.

2. For the sake of convenience and brevity, the parties herein after will be referred to as per their status / ranking in the Tribunal.



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3. The brief facts of the averments in the petition are as follows:

The marriage between the petitioner and the respondent was solemnized on 12.11.1976. Very often the respondent insulted the petitioner in the presence of elders and villagers. The petitioner is doing business of textiles and thereby, the respondent insulted the petitioner by enquiring about the petitioner with the persons working in the textiles. Lastly in the year 2000, the respondent sent out the petitioner from the matrimonial house. Thereafter, the petitioner was residing separately. On 30.03.2004, the petitioner sent a notice to the respondent through his Counsel and the same was replied by the respondent on 26.05.2004 with false averments. The respondent caused cruelty to the petitioner and thereby, the petitioner is entitled to divorce from the respondent.

4. The gist of the counter filed by the respondent are as follows:

The petition is not maintainable either in law or facts. The marriage between the parties is admitted and it is false to state that the respondent caused cruelty by disrespecting the petitioner. It is false to state that the respondent in the year 2000 sent out the petitioner from the house. In fact after the marriage, they lived together and they solemnized marriage to his



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daughters. The petitioner developed illicit intimacy with one Shanthi and residing with her. By suppressing the above said fact, the present petition has been filed with false allegations. The petitioner also sent a notice, dated 30.03.2004 and the same was suitably replied by the respondent. Since the respondent advised to discontinue the illicit intimacy with the said Shanthi, the petitioner has filed the present petition. Therefore, there is no ground to make out the case and hence, the petition is liable to be dismissed.

5. Before the Trial Court, in order to prove the case of the petitioner, the petitioner himself examined as P.W.1 and marked Exhibits P.1 to P.4 and on the side of the respondents, R.W.1 was examined and marked Exhibits R.1.

6. After hearing both the sides, the Trial Court has allowed the petition and dissolved the marriage between the petitioner and the respondent, dated 12.11.1976. Aggrieved over the order of the Trial Court, the respondent in the H.M.O.P.No.92 of 2004 had preferred the appeal before the Principal District Judge, Thoothukudi in C.M.A(H.M)No.32 of



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2009. The Appellate Court after hearing both the sides and perusing the records, reversed the order of the Trial Court and dismissed the petition by allowing the appeal. As against the order passed by the Principal District Judge, Thoothukudi, the present Civil Miscellaneous Second Appeal has been filed by the appellant / respondent / petitioner husband on various grounds.

7. The learned Counsel appearing for the appellant / respondent / petitioner would contend that the appellant herein has filed a petition before the Trial Court for dissolving the marriage between the appellant / petitioner and the respondent, further he was examined as P.W.1 and marked Exhibits P.1 to P.4 and thereby, established the case that the respondent / wife has caused cruelty. After analyzing the evidences, the Trial Court has correctly allowed the petition and dissolved the marriage between the appellant / respondent / petitioner and the respondent / appellant / respondent. The respondent has preferred an appeal and the Appellate Court without considering the evidences in a proper perspective, erroneously allowed the appeal and thereby, the order passed by the First Appellate Court is liable to be set aside by restoring the order of the Trial



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Court. The First Appellate Court failed to consider the evidence of P.W.1 that the respondent, by insulting him caused cruelty and further failed to consider that, from the year 2000 onwards they are residing separately and the respondent has not filed any application for destitution of conjugal rights. Therefore, the order of the First Appellate Court is liable to be set aside by allowing the Civil Miscellaneous Second Appeal.

8. The learned Counsel appearing for the respondent / appellant / respondent would contend that the petitioner has not proved the cruelty caused by the respondent. In fact the appellant / respondent / petitioner had illicit intimacy with one Shanthi and the same was questioned by the respondent / appellant / respondent and thereby, he filed the petition with false averments. Before the Trial Court, in order to prove the case of the respondent, she herself examined as R.W.1 and also marked Exhibit R.1. Without considering the evidence of the respondent, the Trial Court erroneously allowed the petition and dissolved the marriage between the parties. Thereafter, the respondent preferred the appeal, as against the order passed by the Trial Court and the Appellate Court after considering the evidences adduced on either side, correctly allowed the appeal and



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dismissed the petition filed by the appellant / respondent / petitioner.

Moreover, there is no substantial question of law involved in this case and thereby, the present Civil Miscellaneous Second Appeal is liable to be dismissed.

9. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal, the point for determination in this appeal is:

i) Whether any substantial question of law is involved in this case and the appeal is liable to be allowed or not?

10. This Civil Miscellaneous Second Appeal is filed by the appellant / husband, who filed the petition before the Trial Court. Before the Trial Court, he filed a petition for dissolving the marriage between the appellant / respondent / petitioner and the respondent / appellant / respondent and the Trial Court has dissolved the marriage by an order, dated 27.04.2009 and the same was challenged through appeal by the respondent / wife and the First Appellate Court allowed the appeal by reversing the order of the



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Trial Court. Before the Trial Court, appellant / respondent / petitioner was examined P.W.1 and he deposed about the cruelty caused to the respondent, but the respondent denied the evidence of the P.W.1. According to the respondent / appellant / respondent, the appellant / respondent / petitioner had illicit intimacy with one Shanthi and the same was questioned by the respondent. Thereby, the petition was filed. The Trial Court after taking into consideration all the evidences adduced on either side, allowed the petition and dissolved the marriage between the parties. Thereafter, the First Appellate Court after analyzing the evidences, allowed the appeal and reversed the judgment of the Trial Court. Now the point is whether any substantial question of law involved in this case or not?

11. This Civil Miscellaneous Second Appeal is filed under Section 100 of CPC. To attract the provisions of Section 100 of CPC, the petitioner has to make out the substantial question of law. This Court has perused the entire records and the evidences adduced by both the parties. On careful perusal of the documents, there is no substantial question of law involved in this case and the grounds raised by the Appellant are on



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factual aspect. Therefore, this Civil Miscellaneous Second Appeal has no merits and deserves to be dismissed. In the result, this Civil Miscellaneous Second Appeal stands dismissed. There shall be no order as to costs.

12.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

- 1.The Principal District Court,
Thoothukudi.
- 2.The Sub Judge,
Thoothukudi.
- 3.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL, J.

BTR

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