



C.M.S.A.(MD).No.50 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 21.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.S.A.(MD)No.50 of 2011

and

M.P(MD) No.1 of 2011

T.Arumugam

... Appellant/Respondent/Petitioner

-vs-

Lakshmi

... Respondent/Appellant/Respondent

PRAYER: Civil Miscellaneous Second Appeal filed under Section 100 of C.P.C, r/w. Section 28 of Hindu Marriage Act, against the order and decree in H.M.C.M.A.No.6 of 2008 on the file of the Principal District Court, Virudhunagar District at Srivilliputtur, dated 16.12.2010 reversing the order and decree passed in H.M.O.P.No.21 of 2003 on the file of the Sub Court, Srivilliputtur, dated 05.02.2008.

For Appellant : Mr.S.Venkatesh

For Respondent : No appearance



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J U D G M E N T

This Civil Miscellaneous Second Appeal has been filed by the appellant as against the order passed in H.M.C.M.A.No.6 of 2008 on the file of the Principal District Court, Virudhunagar District at Srivilliputtur, dated 16.12.2010. In fact, the appellant herein has filed the petition in H.M.O.P.No. 21 of 2003, before the Sub Court Srivilliputhur, Virudhunagar District, and the same was allowed and divorce was granted as against which the wife/respondent has filed the appeal before the first appellate Court in H.M.C.M.A.No.6 of 2008 and the same was allowed by reversing the order of the trial Court, hence the present appeal.

2. For the sake of convenience and brevity, the parties hereinafter will be referred to as per their status/ranking in the trial Court.

3. The brief facts of the averments made in the petition before the trial Court are as follows:

The marriage between the petitioner and the respondent was



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solemnized on 27.10.1985 at Ooranipatti Street, Subramaniya Swamy Temple as per Hindu Rights and Customs. The petitioner was working in Ramanad District Court. Both the petitioner and the respondent are residing at Madurai. After few months, the respondent's family members demanded the salary of the petitioner and the same was settled by the petitioner. The respondent went along with her mother and her pregnancy was not even brought to the notice of the petitioner. Thereafter, a male child born to the petitioner and the respondent. When he went to saw the child, they insulted the petitioner and again at the time of birth of second child also, the respondent and her family members insulted him. Thereafter, the respondent left the matrimonial house. The respondent without permission of the petitioner aborted the third child. The petitioner is residing along with their son and the respondent is residing along with their daughter. While so, the respondent lodged a complaint before the District Legal Services Authority, Virudhunagar and the matter was compromised between the parties and then both the parties were living together till 15.09.2000. Thereafter, the respondent neglected the petitioner and left from the matrimonial home without any valid reasons. Already the respondent filed a petition for maintenance in M.C.No.8 of 2001, before the Judicial Magistrate No.II, Srivilliputhur and the petitioner also has been paid



4. The brief averments in the counter filed by the respondent are as follows:

The averments made in the petition are denied as false. It is false to state that the respondent went along with her mother. It is false to state the petitioner has been paid maintenance amount to the respondent. On the other hand, he failed to pay maintenance amount. Therefore, she filed a petition seeking maintenance before the Chief Judicial Magistrate, and the same is pending. The petitioner never paid money and he has not even met out the expenses of the family. The petitioner sent out the respondent along with the child and he is attempting to marry another lady, for which, he filed this petition. Therefore, this petition is liable to be dismissed.



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5. Before the trial Court, on the side of the petitioner, P.W.1 and P.W.2 were examined and documents Ex.P.1 to Ex.P.4 were marked. On the side of the respondents, R.W.1 was examined and documents Ex.R.1 and R.2 were marked. After analyzing the evidence adduced on either side, the trial Court has allowed the petition, by dissolving the marriage between the petitioner and the respondent dated 27.10.1985. Thereafter, the respondent, herein filed appeal in H.M.C.M.A.No.6 of 2008 and the same was allowed and divorce granted was negatived and the order passed by the trial Court was set aside. As against the order passed by the first appellate Court, the present second appeal has been preferred by the appellant/husband on various grounds.

6. In the grounds of appeal, the appellant has also raised the following substantial questions of law:

(i) Has not lower appellate Court committed error in law while reversing the well considered finding of the trial Court in an arbitrary manner?

(ii) Is not the order and decree of lower appellate Court vitiated on account of perverse finding without any material and giving a finding contrary to the materials?



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(iii) Has not the lower appellate Court committed error in law in holding that the appellant has not made out any case for divorce under Section 13(1) (a) and 1 (b) of the Hindu Marriage Act?

7. The learned counsel appearing for the appellant would contend that the appellant and the respondent are residing separately for more than 20 years and the trial Court after analyzing the evidences adduced on either side granted divorce by holding that the respondent caused cruelty and refused to live with him for the past 9 years and deserted the petitioner and thereby there is no scope for reunion and also there are merits in the evidence adduced to the petitioner. But the first appellate Court without considering the evidences wrongly held that the petitioner was residing with another lady and thereby the respondent was residing separately along with her daughter. Therefore, the first appellate Court without any reason erroneously set aside the order passed by the trial Court. Therefore, the order passed by the first appellate Court is liable to be set aside and prayed for restoring the order of the trial Court.



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8. Despite the name of the respondent printed in the cause list, there is no representation for the respondent.

9. This Court heard the learned counsel appearing for the appellant and perused the materials on record. Upon hearing the learned counsel for the appellant and perusing the records, the following the substantial question of law is framed:

(1) Whether the appellate Court committed error in law in holding that the appellant has not made out any case for divorce under Section 13(1) (a) and 1(b) of the Hindu Marriage Act?

10. In this case, it is an admitted fact that the marriage between the petitioner and the respondent was solemnized on 27.10.1985. After the marriage two children were born to them. The main contention of the appellant is that the respondent very often left from the matrimonial home and insulted the petitioner and without any help he is living separately for more than 9 years and thereby he filed the petition before the trial Court. The trial Court after hearing the parties granted divorce by holding that the contention of the respondent that the petitioner had illegally live with another lady and



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even then she is willing to live with the petitioner are not acceptable and at the same time from the beginning of the marriage there were quarrel between the parties and the respondent very often left from the matrimonial home. Already so many chances were given to the respondent for reunion, but they are living separately for more than 9 years and allowed the petition. But the first appellate Court in the order observed that since the petitioner had illicit intimacy with another lady and due to the harassment made by him, the respondent was residing separately and thereby, reversed the order.

11. According to the appellant very often the respondent left from the matrimonial home and living with her mother. During the course of examination also he reiterated the averments of the petition and the evidence of the petitioner shows that the respondent left from the matrimonial home, alleging that the petitioner had illicit intimacy with another lady. The respondent has not taken any steps for restitution of conjugal rights. However, she also filed petition seeking maintenance and maintenance was also awarded. R.W.1 – categorically stated about the Acts of petitioner and she admitted that due to the harassment made by the petitioner, she left from the matrimonial home. The trial Court considering the evidence of both side



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witnesses has passed the order stating that the respondent without any valid reasons is living separately for more than 9 years and thereby granted divorce.

The first appellate Court set aside the order by stating that since the petitioner had illicit intimacy with another lady the respondent is living separately and the petitioner only harassed the respondent and the same has not been considered by the trial Court. This Court carefully analyzed the evidences adduced on both sides, it is true the respondent wife taken plea that the petitioner had illicit intimacy with one Thangamari, but there is no sufficient evidence to prove the same. Per contra in the cross examination she stated that due to the harassment made by the petitioner she left from the home. Therefore, even as per evidence of respondent she left the matrimonial home due to the harassment made by the petitioner. The respondent has not stated as to what kind of harassment was made by the petitioner. Per contra the petitioner side evidence shows that the respondent very often made quarrel with the petitioner and she left the matrimonial home. Therefore, this Court after analyzing the evidences hold that the respondent left from the matrimonial home without any reason and also living separately more than 30 years and thereby, there is no chance for reunion. Therefore, it is appropriate to grant divorce. The petitioner has proved his case and thereby the trial Court



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granted divorce. The first appellate Court has committed error and erroneously held that the petitioner has failed to prove his case and the respondent proved that the petitioner only committed cruelty. Therefore, the order passed by the first appellate Court is liable to be set aside. Thus, the substantial question of law is answered.

12. In the result, this Civil Miscellaneous Second Appeal is allowed and the order passed by the first appellate Court in H.M.C.M.A.No.6 of 2008 on the file of the Principal District Court, Virudhunagar District at Srivilliputtur, dated 16.12.2010 is set aside and the fair and decreetal order passed in H.M.O.P.No.21 of 2003 on the file of the Sub Court, Srivilliputtur, dated 05.02.2008 is restored and the marriage between the petitioner and the respondent dated 27.10.1985 is dissolved. There shall be no order as to costs. Consequently, connected Miscellaneous petition is closed.

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NCC : Yes/No
Index : Yes / No
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To

1. The Principal District Court,
Virudhunagar District at
Srivilliputtur,
2. The Sub Court,
Srivilliputtur.
3. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL,J.

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