



CM.S.A (MD)No.13 of 2013

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Dated: 05.02.2024

CORAM:

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

CM.S.A (MD)No.13 of 2013
and
M.P(MD) Nos. 1 and 2 of 2013

K.Manimala

..Appellant/Appellant/Respondent

Vs.

T.C.Selvarajan

.. Respondent/Respondent/Petitioner

Prayer : This Civil Miscellaneous Second Appeal filed under Section 28 of the Hindu Marriage Act and Section 100 of Civil Procedure Code, against the judgment and decree of the lower appellate Court dated 16.04.2012 passed in H.M.C.M.A.No.42 of 2011 on the file of the Principal District Judge, Tiruchirapalli, confirming the judgement and decree of the trial Court dated 17.03.2011 passed in HMOP No.350 of 2006 on the file of the Principal Sub Ordinate Judge, Tiruchirapalli.

For Appellant : Mrs. J.Anadhavalli

For Respondent : Mrs.T.Banumathy



CM.S.A (MD)No.13 of 2013

WEB COPY

JUDGMENT

This Civil Miscellaneous Second Appeal has been filed by the appellant to set aside the order passed in H.M.C.M.A.No.42 of 2011 on the file of the Principal District Judge, Tiruchirapalli, confirming the judgment and decree of the trial Court dated 17.03.2011 passed in HMOP No.350 of 2006 on the file of the Principal Subordinate Judge, Tiruchirapalli, wherein the respondent herein has filed a petition to dissolve the marriage under the Hindu Marriage Act and the trial Court has granted divorce and dissolved the marriage. As against the order, the appellant herein has filed the first appeal and the same was dismissed. As against the order passed by the first appellate Court, the present appeal has been preferred by the appellant/petitioner.

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

3. The brief facts of the petition before the Trial Court are as follows:

The marriage between the petitioner and the respondent was solemnized on 23.08.2001 as per Hindu rites and customs. After



CM.S.A (MD)No.13 of 2013

three months from the date of marriage, the respondent frequently would go back to her parents house and would stay there for months together. Therefore, she has no intention to come back to the petitioner's house. Hence panchayat was convened and as per the advice of elders, the respondent came to the house of the petitioner and thereafter, the respondent did not have matrimonial relationship with the petitioner and left the matrimonial home and now, is living with her parents. On 03.07.2006, the petitioner sent a legal notice and the same was acknowledged by the respondent on 04.07.2006. In spite of that, she did not go and live with the petitioner. The respondent totally neglected and caused serious mental agony to the petitioner. Hence, the present petition has been filed.

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

The marriage between the parties is admitted. The petitioner very often ill-treated the respondent and she was forced to go out from the house. At the time of Diwali festival in the year 2001, the petitioner demanded household articles as dowry and the said demand was not considered. Due to that disappointment, the petitioner ill-treated the respondent and thereafter, on 06.07.2005, panchayat was convened and the respondent only disliked the



CM.S.A (MD)No.13 of 2013

matrimonial relationship with the petitioner. The allegation of desertion will not arise since 3 ½ years separation was taken and the respondent once again joined with the petitioner. The respondent was treated as servant and she was even prevented to contact her parents and relatives through phone. The respondent was given proper rest and treatment at her parents house and the respondent is always willing to live with the petitioner. The jewels of the respondent are always under the custody of the petitioner. The above said articles have to be returned back to the respondent. Hence, the petition is liable to be dismissed.

5. Before the Trial Court, on the side of the petitioner, they have examined P.W.1 and marked exhibits Ex.P.1 to P.3 and on the side of the respondent, R.W.1 was examined and one exhibit was marked as Ex.R.1.

6. After hearing both sides and perusing the documents available on record, the Trial Court has allowed the application and dissolved the marriage between the petitioner and respondent dated 23.08.2001.



CM.S.A (MD)No.13 of 2013

7. As against the order passed by the Principal Subordinate Judge, Tiruchirapalli , the respondent/wife has preferred an appeal before the Principal District Judge, Tiruchirapalli in H.M.C.M.A.No. 42 of 2011 on various grounds and the learned Principal District Judge, Trichy, has dismissed the appeal and confirmed the order of the trial Court.

8. Aggrieved over by the above said order, the present appeal has been filed by the petitioner on various grounds.

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

i)Whether the appeal is liable to be allowed or not?

10. In this case the respondent herein has filed petition for divorce as against the appellant herein before the trial Court in HMOP No.350 of 2006. On the side of the petitioner in main petition he was examined as P.W.1 and marked Ex.P.1 to P.3. The P.W.1 in his evidence categorically deposed about the incidents and proved the grounds for divorce. Per contra the respondent in the main petition, i.e.,the appellant herein was examined as R.W.1 and marked Ex.R.1.



CM.S.A (MD)No.13 of 2013

On careful perusal of evidence of R.W.1 and Ex.R.1 they shows that the evidence of P.W.1 is denied. The evidence of P.W.1 is cogent and natural, thereby the trial Court after evaluating the oral and documentary evidence adduced on either sides granted divorce and the marriage between the appellant and respondent was dissolved. Thereafter the appellant herein has filed an appeal against the order passed by the trial Court in HMCMA No.42 of 2011 on the file of the Principal District Judge, Trichy and also dismissed by the first appellate Court by considering the order of the trial Court. The orders of trial Court as well as first appellate Court are well reasoned and no perversity of infirmity found on the orders of the Courts below and warrants no interference.

11. On perusal of records, it is seen that there is no substantial question of law framed in this appeal. Since the second appeal has been preferred under Section 100 of the Code of Civil Procedure, without substantial question of law, the second appeal will not lie. In this case, there is no substantial question of law involved and thereby, this Civil Miscellaneous Appeal has no merits and deserves to be dismissed.



CM.S.A (MD)No.13 of 2013

12. At this juncture, the learned counsel appearing for the appellant has argued that she has filed applications to direct the respondent to return the articles those were given at the time of marriage which are under the custody of the respondent and to direct the respondent herein to pay interim maintenance of Rs.5000/- per month to the appellant /petitioner. Since this is second appeal and no petitions were filed before the first appellate Court, it is for the appellant to file appropriate petition before the proper forum. The petitioner is at liberty to approach the appropriate forum for return of jewels and interim maintenance in accordance with law.

13. In the result, this Civil Miscellaneous Second Appeal stands dismissed. Consequently connected miscellaneous petitions are closed.

05.02.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To:

1. The Principal District Judge, Tiruchirapalli
2. The Principal Sub Ordinate Judge, Tiruchirapalli.
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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CM.S.A (MD)No.13 of 2013

P. DHANABAL,J.

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CM.S.A (MD)No.13 of 2013

05.02.2024