



A.S.(MD).No.212 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 08.02.2024

CORAM

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR.JUSTICE C.KUMARAPPAN**

A.S.(MD).No.212 of 2023

Fathima Shareefa

.. Appellant/Petitioner

Vs.

J.Umar Farook

.. Respondent/Respondent

PRAYER: Appeal Suit filed under Section 96 of Civil Procedure Code, to set aside the decree and judgment dated 20.06.2019 in O.S.No.3 of 2019 passed by the learned Family Court, Kanniyakumari at Nagercoil.

For Appellant : Mr.K.Yasar Arafath

For Respondent : No appearance

JUDGMENT

DR.G.JAYACHANDRAN,J.
and
C.KUMARAPPAN,J.

The Appeal Suit is filed by the appellant/wife aggrieved by the dismissal of the suit in O.S.No.3 of 2019 dated 20.06.2019.



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2. The appellant herein, being a Muslim by religion, had filed a suit for dissolution of her marriage held with the respondent herein on the ground that after the marriage on 10.01.2007, the respondent/husband was staying in Bangalore in connection with his employment as a Field Officer in Mid-life Insurance Company and they were blessed with two children. Suddenly, the respondent went missing and in this connection, a police complaint was given by the father of the respondent on 22.12.2016 and a case was registered in Crime No.716 of 2018 under Section 174 CrPC for man missing. In spite of the complaint, the respondent could not be traced and therefore, on the ground that the respondent/husband was not heard for a period of four years and the appellant/wife had not been maintained by him for more than two years, the appellant claimed that she is entitled for dissolution of marriage.

3. Before the Trial Court, the appellant examined herself as P.W.1 and has marked 9 exhibits to prove her marriage with the respondent/defendant and the child birth as well as the criminal complaint registered in Crime No.716 of 2016 at Kottar Police Station. However, the Trial Court has found that there is no evidence to show that after the complaint whether the



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respondent/husband was traced or not and therefore, for want of proof that the appellant's husband had gone missing and was not heard for more than four years, the suit was dismissed.

4. Being aggrieved, the present Appeal Suit is filed on the ground that the Trial Court failed to appreciate the content of the complaint marked as Ex.P7. A paper publication was also effected and the copy of the same was marked as Ex.P9. While so, the factum of not heard for more than four years has been proved through the oral and documentary evidence of the appellant/plaintiff and therefore, the Trial Court ought not to have dismissed the suit.

5. This Court while admitting the appeal caused notice to the respondent, but the same was returned with an endorsement 'unclaimed'. A *suo motu* order was passed for substituted service. Accordingly, the appellant has taken out paper publication in one issue of Malai Malar dated 04.12.2023 circulated within the locality of the residential area, where the respondent last resided. In spite of substituted service by way of paper publication, there is no representation for the respondent.



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6. The point for consideration in this appeal is whether the complaint regarding man missing is suffice to hold that the respondent is not heard for more than four years?

7. The complaint of man missing was given by the father of the respondent and based on the said complaint, FIR was registered in Crime No.716 of 2016 (Ex.P7). A reading of the FIR indicates that at the time of complaint, i.e., on 22.12.2016, the respondent was employed in a Company at Bangalore. The appellant and her child were living in the matrimonial home. The respondent visited the matrimonial home on 09.08.2016 and thereafter, was not heard. The father of the respondent has made certain allegations against a person, by name, Yusuf Saet at Tindivanam, stating that there was life threat to his son, since he is alleged to have borrowed money for an exorbitant interest from the said Yusuf Saet and that may be the cause for the missing of his son.

8. The learned counsel for the appellant submitted that the suit was filed to dissolve the marriage on two grounds. One that the husband was



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not heard for four years and the second ground that for more than two years, he has not maintained the family.

9. From the evidence, this Court finds that even according to the FIR marked as Ex.P7, the respondent was last seen on 9th August 2016. Therefore, the period of four years will get completed only on 9th August 2020, whereas, the suit has been filed on 25.04.2019 much earlier to the period prescribed to invoke Section 2(i) of the Dissolution of Muslim Marriages Act, 1939. However, the other ground for divorce is failure to provide maintenance for a period of two years. The missing of the respondent and the allegation that the appellant had been left without any maintenance by the respondent/husband for more than two years is palpably seen from the pleadings and the documentary evidence. Therefore, this Court, on taking into consideration that the appellant had been left without any maintenance from the date of missing of the respondent, is of the view that the appellant is entitled for divorce. The fact that inspite of notice through Court and paper publication, there is no representation for the respondent, fortifies the complaint given by the father of the respondent about his missing.



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10. In view of the above, the impugned judgment and decree of the Family Court, Kanniyakumari at Nagercoil in dismissing O.S.No.3 of 2019 dated 20.06.2019 is set aside and the Appeal Suit is allowed. Consequently, the marriage held between the appellant and the respondent on 10.01.2007 is hereby dissolved. There shall be no order as to costs.

(G.J.,J.) (C.K.,J.)
08.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Lm

To

1.The Family Court,
Kanniyakumari at Nagercoil.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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