



C.M.S.A.(MD).No.25 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.S.A.(MD)No.25 of 2015

Ramadevi ... Appellant/Respondent/Respondent

-vs-

Balamurugan ... Respondent/Appellant/Petitioner

PRAYER: Civil Miscellaneous Second Appeal filed under Section 28 of Hindu Marriage Act r/w Section 100 of C.P.C, against the judgment and decree passed by the I Additional District Judge, Thoothukudi, Thoothukudi District in HMCMA. No.10 of 2012, dated 05.02.2015 and reversing the fair and dectetetal order passed by the Sub Judge, Thoothukudi in H.M.O.P.No.78 of 2009, dated 12.01.2012.

For Appellant : Mr.D.Saravanan

For Respondent : Mr.T.Vadivelan

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 HMCMA.No.10 of 2012, on the file



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of the I Additional District Judge, Thoothukudi, Thoothukudi District, wherein, the respondent herein has filed an appeal as against the order in H.M.O.P.No.78 of 2009, dated 12.01.2012, on the file of the the Sub Court, Thoothukudi.

2. Before the trial Court, the respondent herein has filed the petition seeking divorce as against the respondent and the same was dismissed. Thereafter, the respondent herein filed appeal before the I Additional District Court, Thoothukudi, Thoothukudi District in HMCMA. No.10 of 2012 and the same was allowed and divorce was granted. As against the order passed by the first appellate Court, the present second appeal has been filed by the appellant.

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

4. 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 25.01.2007 at Thoothukudi as per Hindu Customs and Rites.

After the marriage, the respondent told that the petitioner was not a fit person for marital life. She failed to take care of the petitioner and his aged mother. When the petitioner questioned the above activities of the respondent, she told that she was beautiful and she thought that she would marry her relative whom she liked. So the petitioner got mental agony. In these circumstances, she left the marital home voluntarily in the month of April 2008 without any other reason. The petitioner requested her to come and live with him. However, she refused to have reunion. Thereafter, the petitioner got employment at Chennai, took the respondent to Chennai and after one week she left from Chennai stating that she was not willing to live with him at Chennai. Further the respondent foisted many criminal cases against the petitioner and thereby also caused mental cruelty to the petitioner. Hence, he filed the petition.

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

The petition is not maintainable either in law or on facts. The averments stated in paragraph Nos. 3 to 10 in the petition are false and denied



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by this respondent. The marriage between the petitioner and the respondent is admitted by the respondent. After the marriage the petitioner told that they were to postpone the child birth for some months, since he had loss in his construction work. Further the petitioner and his mother beat the respondent and forcefully obtained 30 sovereigns from the respondent and pledged the same to meet the loss incurred in the respondent's construction work. Again the petitioner and his mother caused cruelty by demanding additional dowry of Rs.50,000/-. On 07.05.2008, the petitioner's mother asked respondent to sign in a blank paper. When the respondent refused, she beat her, burned her hand and sent her out of the house. Thereafter, the respondent gave a complaint before the All Women Police Station, Thoothukudi on 17.01.2009. Thereafter, the police enquired them and advised the petitioner and her mother to take care of the respondent. But they did not do so. The respondent has filed the complaint only for reunion. But the petitioner suppressed the same and filed this petition.

6. Before the trial Court, on the side of the petitioner, P.W.1 and P.W.2 were examined and Ex.P.1 was marked. On the side of the respondent, R.W.1 and R.W.2 were examined and no documents were marked.



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7. The trial Court after hearing both sides and perusing the records dismissed the petition filed by the petitioner. Thereafter, the petitioner preferred an appeal before the first appellate Court as against the order passed by the trial Court. The first appellate Court after hearing both sides allowed the appeal and divorce was granted. As against the order passed by the first appellate Court, the present second appeal has been filed by the appellant/respondent on various grounds. The respondent also alleged the some substantial questions of law are involved in this case.

8. The learned counsel appearing for the appellant would contend that the respondent filed petition before the trial Court for granting divorce on the ground of cruelty. On the side of the petitioner, P.W.1 and P.W.2 were examined and Ex.P.1 was marked. On the side of the respondent, R.W.1 and R.W.2 were examined and no documents were marked. Based on the evidences adduced on either side, the trial Court dismissed the petition by holding that the petitioner has not proved the ground for granting divorce. The first appellate Court, without considering the evidences in a proper perspective granted divorce by setting aside the order of the trial Court. The first appellate Court without analyzing the pleadings and evidences allowed



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10. This Court heard both sides and perused the materials available on record. Upon hearing both sides and perusing the records, the point for determination in this appeal is:

(i) Whether any substantial question of law involved in this case?

11. In this case, it is an admitted fact that the appellant and the respondent, for the past 12 years, are living separately. The respondent herein has filed the petition before the trial Court for granting divorce and the trial Court dismissed the petition holding that the petitioner failed to prove the ground of cruelty and the respondent prove that the petitioner and his mother caused cruelty by demanding dowry and a complaint was also given against the petitioner and thereafter even after the advise of his mother did not take any steps to take care of the respondent and thereby the petition was dismissed.

12. The first appellate Court after analyzing evidences held that the respondent failed to prove the harassment caused by the petitioner and his mother and the petitioner and the respondent are living separately from the month of April 2008 onwards. The respondent also lodged complaints before



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different forums and lodging of the criminal complaint itself is a cruelty the first appellate Court allowed the appeal by granting divorce.

13. This Court carefully perused the records and judgment of the Courts below. The trial Court not at all discussed about the evidence adduced by the petitioner and only discussed about the cruelty pleaded by the respondent side and dismissed the petition. According to the petitioner, the respondent caused cruelty by lodging false complaint as against the petitioner and his parents and she is residing separately without any valid reasons. On the side of the petitioner, they examined P.W.1 and P.W.2 and marked Ex.P.1 and on the side of the respondent R.W.1 and R.W.2 were examined, the first appellate Court after analyzing the evidences adduced on both sides set aside the order of the trial Court and passed reasoned order. The petitioner and the respondent were residing separately from the year 2008. There is no chance for reunion and therefore the order passed by the first appellate Court is well reasoned and it does not warrant interference. In the second appeal filed by the appellant it is the duty of the appellant to establish the substantial question of law involved in this case and it cannot be allowed only on the ground that the petitioner has raised some substantial questions of law.



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14. On careful perusal of the grounds of appeal it is seen that there is no any substantial question of law involved in this case as alleged in the grounds. In the case of the second appeal without any substantial question of law there is no scope for interference is required in the order passed by the Courts below.

15. In view of the above said discussions, this Court is of the opinion that the Civil Miscellaneous Second Appeal has no merits and it deserves to be dismissed. Accordingly, this Civil Miscellaneous Second Appeal is dismissed and the order of the first appellate Court is confirmed. There shall be no order as to costs.

21.03.2024

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

1. The I Additional District Judge,
Thoothukudi, Thoothukudi District.
2. The Sub Judge, Thoothukudi.
3. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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P.DHANABAL,J.

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