



CM.S.A (MD)No.13 of 2016

WEB COPY

Dated: 13.02.2024

CORAM:

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

CM.S.A (MD)No.13 of 2016

and

C.M.P(MD) No.4385 of 2016

Kavitha

..Appellant/Appellant/Respondent

.VS.

Ammaiappan

..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 fair and decreetal order passed in C.M.A.No.10 of 2011 on the file of the learned Principal District Judge, Dindigul dated 04.02.2016 confirming the fair and decreetal order passed in HMOP No.225 of 2008 dated 30.11.2010 on the file of the learned Principal Subordinate Judge, Dindigul

For Appellant : Mr.Anath C.Rajesh

For Respondent : Mr.M.Jothi Basu

JUDGMENT

This Civil Miscellaneous Second Appeal has been filed as against the order passed in C.M.A.No.10 of 2011 on the file of the learned Principal District Judge, Dindigul, wherein the appellant



CM.S.A (MD)No.13 of 2016

herein has filed appeal against the fair and decreetal order passed in HMOP No.225 of 2008 dated 30.11.2010 on the file of the learned Principal Subordinate Judge, Dindigul. Before the learned Principal Subordinate Judge, Dindigul the respondent herein has filed petition for divorce as against the appellant herein and the said petition was allowed. As against the same first appeal was filed before the learned Principal District Judge, Dindigul and the same was dismissed. As against the same, the present Civil Miscellaneous Second Appeal has been filed.

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

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

The marriage between the petitioner and the respondent was solemnized on 26.02.2007. After marriage the petitioner was working at Tamil Nadu Mercantile Bank, , Mantvi Branch, Mumbai and he used to go to the house of the respondent. Thereafter he was transferred to Eriodu Branch, Dindigul and residing at Dindigul, since the respondent was residing there. The respondent refused to



CM.S.A (MD)No.13 of 2016

go along with the petitioner by stating that the petitioner is too short, black and thereby she disliked him. They not even lived as husband and wife for one month. According to her already the petitioner died and frequently made quarrel and then she left from the matrimonial home on 09.07.2007. Thereafter the petitioner stayed in her parental home for delivery and gave birth to a male child on 13.01.2008 and the same was not informed to the respondent. When the petitioner asked to come along with the child she refused. Further the respondent quarreled with the petitioner along with her parents and sent him out from the house by pushing him. Hence he filed petition seeking divorce.

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

The marriage between the parties and the relationship are admitted. At the time of marriage the petitioner demanded dowry of 60 sovereigns of gold jewels and the respondent only able to give 35 sovereigns of gold jewels and five sovereigns gold jewels to the petitioner and also one sovereign gold ring totally 41 sovereigns was offered, thereby there has been dispute between the petitioner and the respondent. In the month of August 2007 the petitioner sent out the respondent from the house at about 10.00 p.m., and locked the



CM.S.A (MD)No.13 of 2016

door, thereafter she went to the Assistant Manager house and thereafter stayed in the women's hostel. After giving birth to male child the petitioner decided to take her to another house at Dindigul to maintain the child and the same was agreed by the respondent. Thereafter the respondent left the child into to her parents house. Whiles, when she entered into the house of the petitioner she prevented her from entering into the same. Even now the respondent is ready to live with the petitioner and thereby this petition is liable to be dismissed.

5. Before the Trial Court, on the side of the petitioner, he has examined P.W.1 and marked exhibits Ex.P.1 to P.8 and on the side of the respondent, R.W.1 and R.W.2 were examined and no documents were marked.

6. After hearing both sides and perusing the documents available on record, the Trial Court has allowed the petition and granted divorce. As against the fair and decretal order passed by the trial Court the respondent therein has preferred appeal before the learned Principal District Judge, Dindigul in C.M.A.No.10 of 2011. The first appellate Court after hearing both sides and perusing the records dismissed the appeal filed by the appellant. As against



CM.S.A (MD)No.13 of 2016

the order passed by the first appellate Court, the present Civil Miscellaneous Second Appeal has been filed by the appellant therein on various grounds.

7.The learned counsel appearing for the appellant would contend that the respondent/respondent/petitioner has filed petition seeking divorce on the ground of cruelty but the petitioner has not proved cruelty but the appellant herein was examined as R.W.1 and also examined R.W.2 , the respondent/petitioner has failed to prove ground of cruelty for granting divorce but the Courts below have not considered the same and erroneously allowed the application and therefore the orders passed by the Courts below are liable to be set aside.

8. The learned counsel appearing for the respondent would contend that after the marriage the appellant/respondent caused cruelty on various occasions and they only lived for short time and during that period the respondent ill-treated the petitioner and thereby there was quarrel between them and when the petitioner called the respondent for living through separate house she refused to live with the petitioner and also the respondent not even included his initial of the birth certificate of the child and in bank account in



CM.S.A (MD)No.13 of 2016

the column for guardian the name of the petitioner was also not even mentioned and to that extent she hated the petitioner. The petitioner produced documents Exs.P.1 to P8 and the petitioner also correctly stated about the cruelties caused by the respondent and thereby the petitioner proved the cruelty caused by the respondent. The trial Court after analyzing the evidences adduced on both sides correctly allowed the petition. The first appellate Court also after taking into consideration all the aspects correctly dismissed the appeal. Therefore the present appeal is also liable to be dismissed. Moreover there is no substantial question of law involved in this case and thereby the appeal is liable to be dismissed.

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

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

10. In this case the present appeal has been filed by the appellant/wife as against the respondent/husband. Infact before the Trial Court the respondent herein has filed petition for divorce as against the respondent and the same was allowed on the ground of



CM.S.A (MD)No.13 of 2016

cruelty. As against the order passed by the trial Court the respondent/wife has preferred the appeal. The said appeal was also dismissed by confirming the order of the trial Court. As against the order of the appellate Court, the Civil Miscellaneous Second Appeal has been filed by the respondent/wife.

11. The main contention of the appellant is that the respondent has filed petition for divorce on the ground of cruelty and the cruelty is not proved by the petitioner. According to the petitioner the respondent/wife caused cruelty after one month from the date of marriage and the respondent refused to live with the petitioner and she disliked the petitioner and thereby she caused cruelty. Before the trial Court on the side of the petitioner he examined P.W.1 and marked exhibits Ex.P.1 to P.8 and on the side of the respondent, R.W.1 and R.W.2 were examined and no documents were marked. The trial Court allowed the petition by holding that the petitioner spent a sum of Rs.45,000/- towards separate house and the same was also admitted by the respondent, the respondent herself admitted that before the name of the child initial of the petitioner was not even found in the bank pass book of the child and in the nomination form the name of the petitioner has not been mentioned . In Ex.P.7, reply notice so many allegations were levelled against the



CM.S.A (MD)No.13 of 2016

petitioner and the same was also admitted by the respondent.

Therefore after considering all the aspects the trial Court came to conclusion that the respondent caused cruelty and thereby allowed the application. The first appellate Court also after considering the evidences adduced on both sides came to conclusion that there is no perversity or infirmity found in the order and thereby confirmed the judgment of the trial Court by dismissing the appeal. The Courts below have given concurrent findings and no any infirmity found in the orders of the Courts below.

12. The next point is whether any substantial question of law involved in this case or not. This Civil Miscellaneous Second Appeal has been filed by the appellant and thereby the appellant has to satisfy that the substantial question of law involved in this case. The appellant has raised so many ground in the appeal and the ground are all only on factual aspects and there is no substantial question of law involved in this case. In view of the same, the Civil Miscellaneous Second Appeal has no merits and deserves to be dismissed.



CM.S.A (MD)No.13 of 2016

WEB COPY

13. In the result, this Civil Miscellaneous Second Appeal stands dismissed by confirming the orders of the both the Courts below. No costs. Consequently connected miscellaneous petition is closed.

13.02.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
aav

To:

1. The Principal District Judge, Dindigul
2. The Principal Subordinate Judge, Dindigul
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



CM.S.A (MD)No.13 of 2016

P. DHANABAL,J.

aav

CM.S.A (MD)No.13 of 2016

13.02.2024