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C.M.S.A(MD)Nos.27 & 28 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 01.03.2024

CORAM:

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

C.M.S.A(MD)Nos.27 & 28 of 2016

and

C.M.P(MD)No.8381 of 2016

Radhakrishnan

... Appellant/Appellant/
Petitioner
(In Both the Cases)

Vs.

Rajarajeswari

... Respondent/Respondent/
Respondent
(In Both the Cases)

Prayer in C.M.S.A(MD)No.27 of 2016 : This Civil Miscellaneous Second Appeal filed under Section 28 of the Hindu Marriage Act, 1925 r/w Section 100 of CPC, to call for the records relating to the judgment and decretal order, dated 10.04.2015 made in C.M.A.No.10 of 2013 on the file of the II Additional District and Sessions Judge, Thanjavur against H.M.O.P.No.57 of 2007 on the file of the Sub Court, Kumbakonam, dated 08.04.2013.

Prayer in C.M.S.A(MD)No.28 of 2016 : This Civil Miscellaneous Second Appeal filed under Section 28 of the Hindu Marriage Act, 1925 r/w Section 100 of CPC, to call for the records relating to the judgment



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and decreetal order, dated 10.04.2015 made in C.M.A.No.11 of 2013 on the file of the II Additional District and Sessions Judge, Thanjavur confirming the counter claim made in H.M.O.P.No.57 of 2007 on the file of the Sub Court, Kumbakonam, dated 08.04.2013.

(In Both Cases):

For Appellant : Mr.T.Antony Arul Raj

For Respondent : M/s.Hema Sampath
Senior Counsel
for Mr.R.Subramanian

COMMON JUDGMENT

These Civil Miscellaneous Second Appeals have been preferred as against the order passed in C.M.A.Nos.10 and 11 of 2013 respectively. In both the Civil Miscellaneous Appeals, the appellant and the respondent are one and the same. In fact, the appellant herein has filed a petition before the Trial Court under Section 9 of the Hindu Marriage Act in H.M.O.P.No. 57 of 2007 as against the wife and in that petition, the wife has filed counter claim seeking divorce from the appellant. The Trial Court has dismissed the petition filed by the husband (i.e.,) appellant and granted divorce by allowing the counter claim. As against both the orders, the present appellant has filed appeals in C.M.A.Nos.10 and 11 of 2013



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respectively. The First Appellate Court also confirmed the orders passed by the Trial Court by dismissing the appeals. Now the appellant has preferred these Civil Miscellaneous Second Appeals.

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 case of the appellant before the Trial Court is that the marriage between the petitioner and the respondent was solemnized on 24.05.2002 at Chennai. Thereafter, a male child was born on 23.08.2003. In the month of June 2004, the respondent wanted to go to her parent house along with child. Thereafter when the petitioner asked to come with him, she refused for the same. Without any valid reasons, the respondent has been neglecting the petitioner and refused to live with him. Hence, he filed the petition for restitution of conjugal rights.

4. The respondent has filed counter stating that the petition is not maintainable. After the marriage, by suspecting the character of the respondent, the petitioner frequently made quarrel with her and demanded



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dowry from her parents. Due to the harassment made by the petitioner, the respondent left from the matrimonial home. At the time of marriage, the family of the petitioner represented that he is expecting vedic. But he did not know the basic in the vedic. Further, the petitioner insulted the respondent in the presence of her parents and he never taken care of the minor child and the respondent. However, the petitioner had affairs with one Gayathri even prior to the marriage and he was also affected by mental health. Therefore, the petitioner is residing separately for the above said reasons. Further, she filed a counter claim to grant divorce.

5. Before the Trial Court, on the side of the petitioner, P.W.1 and P.W.2 were examined and marked Exhibits P.1 to P.4. On the side of the respondent, D.W.1 and D.W.2 were examined and no documents were marked.

6. After hearing both the sides and perusing the records, the Trial Court has dismissed the petition filed by the petitioner under Section 9 of the Hindu Marriage Act and the counter claim was allowed and the marriage between the petitioner and the respondent was dissolved. As



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against the orders passed by the Trial Court, the petitioner has preferred appeals in C.M.A.Nos.10 and 11 of 2013 respectively. The First Appellate Court after analyzing the evidences adduced on both the sides and hearing both the sides, confirmed the order passed by the Trial Court and dismissed both the appeals. As against the same, the present Civil Miscellaneous Second appeals have been preferred.

7. The learned Counsel appearing for the appellant would contend that the appellant is ready to live with the respondent and without any valid reasons, she left from the matrimonial home and neglected the appellant. There is no grounds to grant divorce and based on the vague allegations, the Trial Court has granted divorce and the notice alone was taken into consideration by the Trial Court and the allegations in respect of harassment demanding of dowry and affairs with another girl have not been proved by the respondent. Despite that, the Trial Court has granted divorce and dismissed the petition filed by the appellant. The First Appellate Court also without considering the above said aspects, erroneously dismissed the appeals filed by the petitioner. Therefore, the order passed by the Trial Court as well as the First Appellate Court are



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liable to be set aside by allowing these appeals.

8. The learned Counsel appearing for the respondent would contend that before the marriage, the appellant suppressed many facts and this appellant is suspecting the character of the respondent and after the marriage, a male child was born to them and the child is still under the custody of the respondent and the appellant being the dutiful father has not taken any steps to maintain the child and not even paid any single pie for maintenance so far. In order to prove the case of the respondent, D.W.1 and D.W.2 were examined and no documents were marked. The Trial Court after considering the evidences adduced on both the sides fairly came to a conclusion and passed a reasoned order. Therefore, the order passed by the Trial Court by granting divorce and by dismissing the petition filed by the appellant is in order and the present appeals are liable to be dismissed.

9. This Court had heard both sides and perused the materials available on record and upon hearing both sides and perusing the documents, the point for determination in these appeals are:



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i) Whether any substantial question of law is involved in appeal Nos.10 and 11 of 2013?

10. In this case, there is no dispute in respect of the relationship of the parties and the marriage between the parties and the male child born to them are admitted facts and the separation of parties is also admitted fact. The wife admitted that she is living with her parents. According to the appellant, the respondent living with her parents without any valid reasons and she neglected the appellant and thereby, he filed the petition for restitution of conjugal rights. According to the respondent, the appellant harassed the respondent and demanded dowry of Rs.10,00,000/- and also insulted her in the presence of her parents and he was affair with another lady even prior to the marriage. Thereby, she left from the matrimonial home and was living separately. In this context, before the Trial Court, on the side of the petitioner, they examined P.W.1 and P.W.2 and marked Exhibits P.1 to P.4. On the side of the respondent, D.W.1 and D.W.2 were examined and no documents were marked. The Trial Court after considering the evidences adduced on both sides, dismissed the petition filed by the appellant for restitution of conjugal rights and granted divorce



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on the ground that the appellant caused harassment to the petitioner and also there is a chance for demanding dowry of Rs.10,00,000/- and also in the Exhibit P.4, there is a recital that he ready to give the articles to respondent and thereby, he was not willing to live with the petitioner and if restitution of conjugal rights is ordered, it will indulge to the life of the respondent and thereby, granted divorce.

11. The First Appellate Court also in the order elaborately discussed the judgments reported in *2014 (1) L.W 487 [R.Vasanthi Vs. M.Harikrishnan]*, *2013 (2) MWN (Civil) 386 [Shantakumari @ Santhi Vs. R.Venkatasubramani]*, *2011 (3) MWN (Civil) 723 [Rajesh Surana Vs. Rekha]* and *2011 (1) MWN (Civil) 225 [Gurbux Singh Vs. Harminder Kaur]*. After referring the above said judgments, dismissed the appeal by holding that the cruelty pleaded by the respondent's wife though counter claim has been proved. In the present appeals, the appellant has raised so many grounds and all the grounds are factual aspects and no any substantial question of law involved in these appeals either in other appeal No.27 of 2016 or in appeal No.28 of 2016.



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12. These are second appeals filed by the appellant under Section 100 of CPC and thereby, they have to establish the substantial question of law involved in these cases. On careful perusal of the records and evidences adduced on both the sides on the grounds of appeals, there is no substantial question of law involved in these appeals and thereby, these Civil Miscellaneous Second Appeals have no merits and deserves to be dismissed.

13. In the result, the Civil Miscellaneous Second Appeals in C.M.S.A(MD)No.27 of 2016 and C.M.S.A(MD)No.28 of 2016 stand dismissed by confirming the orders passed by the Courts below. Considering the relationship of the parties, there shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

01.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR



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To

- 1.The II Additional District and Sessions Judge,
Thanjavur.
- 2.The Sub Court,
Kumbakonam.
- 3.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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