



C.M.S.A.(MD).No.35 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 06.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.S.A.(MD)No.35 of 2016

and

C.M.P(MD) No.9170 of 2016

Nallamuthu

... Appellant/Respondent/Respondent

-vs-

Ashokan

... Respondent/Appellant/Petitioner

PRAYER: Civil Miscellaneous Second Appeal filed under Section 100 of Civil Procedure Code read with Section 28 of Hindu Marriage Act, to set aside the judgment and decree passed in H.M.C.M.A.No.2 of 2014 dated 18.04.2016 on the file of the 4th Additional District Court, Madurai, and to confirm the judgment and decree passed in H.M.O.P.No.7 of 2005 dated 05.06.2013 on the file of the Sub Court, Melur camp Court, Melur.

For Appellant : Mr.S.Jeyakumaran

For Respondent : Mr.C.R.Janarthanan



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J U D G M E N T

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This Civil Miscellaneous Second Appeal has been filed by the appellant as against the order passed in H.M.C.M.A.No.2 of 2014 on the file of the 4th Additional District Court, Madurai, wherein, the respondent has filed an appeal as against the order passed in H.M.O.P.No.7 of 2005 on the file of the Subordinate Court, Melur camp Court, Melur dated 05.06.2005. The respondent herein has filed the above said H.M.O.P for granting divorce and the same was dismissed. As against the same, the respondent herein filed an appeal. The First Appellate Court allowed the appeal and granted divorce. As against the order passed by the First Appellate Court, the present Appeal has been preferred by the appellant/wife.

2. 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 solemnized on 26.03.1999 under the Hindu Marriages Act and no children was born to them. From the beginning of the marriage, the respondent has not shown the love and affection for the petitioner and their family. Not even, she has provided food to the petitioner. Subsequently, she took her belongings



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and left from the matrimonial home and went to her parents' house in the month of September 2002 without any valid reasons. In spite of repeated requests and demands made by the petitioner, she has refused to come to his house. On 08.04.2004, when he was in hospital, the petitioner has not come to the hospital and she also had given a complaint as against the petitioner and his parents and his sisters. Since the respondent caused cruelty, the present petition has been filed.

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

The petition is not maintainable either in law or on facts. At the time of marriage, the parents of the respondent provided 30 sovereigns of gold jewels and household articles worth about Rs.1 lakh. After the marriage, they lived as a husband and wife only for a period of 1 year. Thereafter, the petitioner demanded dowry of Rs.1 lakh and the same was refused by the parents of the respondent. Though, the allegations made by the petitioner that the respondent caused cruelty by not even providing food, even now, she is ready to live with the petitioner. Hence, the petition is liable to be dismissed.



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4. Before the Tribunal, on the side of the petitioner, P.W.1 to P.W.4 were examined and Exhibits Ex.P.1 to Ex.P.4 were marked. On the side of the respondent, R.W.1 was examined and Ex.R.1 & Ex.R.2 were marked.

5. After considering the evidences adduced on both the sides, the trial Court dismissed the petition. Thereafter, the unsuccessful petitioner filed an appeal in H.M.C.M.A.No. 2 of 2014 before the IV Additional District Judge, Madurai. The First Appellate Court also allowed the appeal by reversing the judgment of the trial Court and granted divorce. Aggrieved by the said judgment, the present appeal has been preferred by the appellant/wife.

6. The learned counsel appearing for the appellant would contend that the respondent herein has filed a petition before the trial Court for granting divorce on the ground of cruelty and desertion and the same was not proved by sufficient evidence. Hence, the trial Court dismissed the petition by holding that the desertion was not proved. But, the First Appellate Court without considering the evidence adduced by the appellant and the respondent, erroneously allowed the appeal and set aside the order passed by the trial Court and granted divorce. The First Appellate Court failed to



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consider the fact that the respondent herein has not produced the copy of the complaint, which was lodged before the police against him and the allegations made in the petition in respect of desertion and cruelty have not been proved. The First Appellate Court failed to consider the fact that the appellant has admitted that she was appointed as government servant based on the version in Ex.R.2 as she was a divorcee. Therefore, the order passed by the First Appellate Court is liable to be set aside and the order of the trial Court is to be restored.

7. The learned counsel for the respondent would contend that the respondent filed a petition before the trial Court seeking divorce as against the appellant on the grounds of desertion and cruelty. To prove the same, the respondent has examined P.W.1 to P.W.4 and marked Exs.P1 to Ex.P4. The witnesses on the side of the respondent categorically supported the case of the respondent herein. The trial Court without considering the evidence adduced by the respondent, erroneously dismissed the petition. The First Appellate Court after going through all the materials, rightly set aside the order passed by the trial Court and granted divorce on the grounds of cruelty and the desertion. Therefore, the present appeal is liable to be dismissed.



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8. This Court heard both sides and perused the records.

9. The points for determining in this appeal is whether any Substantial Question of Law is involved in this appeal.

10. In this case, there is no dispute with regard to the relationship of the parties. There is no children was born to the appellant and the respondent. According to the appellant, the respondent herein filed a divorce petition before the trial Court and the same was dismissed, since the grounds were not proved by the respondent herein. Thereafter, he preferred an appeal before the First Appellate Court and the First Appellate Court allowed the appeal and granted divorce. According to the respondent, the trial Court failed to consider the evidence produced by the respondent, wherein the First Appellate Court after taking consideration of the evidence in a proper manner and rightly allowed the appeal and granted divorce. The trial Court in its order, held that according to the petitioner, the respondent left from the matrimonial home in the year 2002 itself. But, in the petition, he stated that even after completion of 5 years, no child was born to them. Therefore, the



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above said fact is not correct. Since, the marriage was solemnized in the year 1999. Further, he stated that when he was in hospital in the year 2004, the respondent did not attend. But, the medical records shows that the consent was obtained from the respondent. Therefore, the trial Court has dismissed the petition. The First Appellate Court in its order, discussed that in the hospital records, the name of the respondent was mentioned. But, however, due to compulsion only, she attended the hospital. The First Appellate Court relied upon Ex.P.4, the complaint given by the petitioner and also relied upon the counter filed by the respondent, came to the conclusion that the petitioner has proved the ground of cruelty as well as the desertion and also relied the evidence of the respondent that she obtained a government job on the ground of divorcee before granting divorce to her. Therefore, it shows that the respondent was not ready to live with the petitioner and thereby, granted divorce. The trial Court has not discussed about the above said aspects. However, since this is second appeal, the same is lie only as against the substantial question of law. In this case, all the grounds raised by the appellant are factual aspects and there is no substantial question of law involved. Therefore, the second appeal has no merits and the same deserves to be dismissed.



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11. Accordingly, the Civil Miscellaneous Second Appeal is dismissed.

There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

06.03.2024

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

1. The 4th Additional District Court,
Madurai.
2. The Sub Court, Melur camp Court,
Melur.
3. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL,J.

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