



CM.S.A (MD)No.6 of 2016

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Dated: 07.02.2024

CORAM:

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

CM.S.A (MD)No.6 of 2016
and
C.M.P(MD) No.5974 of 2016

Baskar

..Appellant/Respondent/Petitioner

Vs.

Karpagam

.. Respondent/Appellant/Respondent

Prayer : This Civil Miscellaneous Second Appeal filed under Section 28 of the Hindu Marriage Act and Section 100 of Civil Procedure Code to set aside the order in HMCMA No. 1 of 2010 on the file of the Principal District Court, Virudhunagar District dated 17.08.2012 against HMOP No.135 of 2008 on the file of the Subordinate Judge, Sivakasi dated 02.11.2009

For Appellant : Mr. Gunaseelan Muthiah

For Respondent : No appearance

JUDGMENT

This Civil Miscellaneous second Appeal has been filed as against the order passed in HMCMA No.1/2010 on the file of the



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Principal district judge, Virudhunagar District at Srivilliputhur
dated 17.08.2012.

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. Infact the appellant herein has filed a petition No.135/2008 on the file of the Subordinate Judge, Sivakasi seeking divorce on the ground of cruelty and the same was allowed and divorce granted. As against the order passed by the Sub Court, Sivakasi, the respondent /wife has filed appeal in HMCMA No.1/2010 on the file of District judge, Virudhunagar District at Srivilliputhur and the same was allowed and the divorce granted by the Sub Court was set aside by allowing the appeal. Being aggrieved by the order of the learned Principal Judge, in HMCMA No. 1/2010 the present second appeal has been filed by the petitioner

4. The brief averments of the petition before the trial Court are as follows:

The marriage between the petitioner and the respondent was solemnized on 06.07.2003 as per Hindu rites and customs at Chennai. Due to the wedlock female child was born on 25.06.2004.



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The respondent for about 1 ½ years after the birth of the child stayed in her parents house without any valid reasons. On 25.07.2007 the respondent without any valid reason left from the matrimonial home along with the child. Thereafter the petitioner filed petition HMOP 117 of 2005 for restitution of conjugal rights. A compromise was arrived and then the respondent returned to her matrimonial home. Thereafter the said petition was dismissed for default. During the year May 2007, the respondent lodged a complaint before the All Women Police Station, Avadi, Chennai with false allegations. The police advised her to restore the matrimonial life but she denied. The respondent caused mental cruelty to the petitioner, hence filed the petition.

5.The gist of the counter filed by the respondent:

The marriage between the petitioner and the respondent and the child born to them are admitted. Infact after the birth of female child neither the petitioner nor his parents saw the child. The parents of the petitioner not allowed him to live with the respondent. Therefore on 26.06.2005, the respondent sent a legal notice and the same was received by the petitioner on 04.07.2008 and gave a false reply. While the facts are being so, the present petition is filed with false allegations. The petitioner filed HMOP 117/2005 only to



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escape from the clutches of law and only on the request of the petitioner the respondent consented for reunion. After a year due to the dowry harassment, the respondent gave a complaint before the Avadi Police Station where the petitioner assured to take the respondent for reunion. The petitioner has suppressed the material facts and filed this petition only to get divorce. Therefore the petition is liable to be dismissed.

6. Inorder to prove the case of the parties on the side of the petitioner he examined P.W.1 and P.W.2 and marked Exp.1 to 3 and on the side of the respondent she examined R.W1 and R.W.2 and marked exhibits R1 to R4. After hearing both sides, the trial Court has allowed the petition and marriage between the petitioner and the respondent was dissolved.

7. Aggrieved over by the order of the Trial Court the respondent/wife preferred an appeal in HMCMA 1/2005 of the Principal District Judge, Virudhuagar and the same was allowed by setting aside the order passed by the trial Court. As against the order passed by the first appellate court the second appeal has been filed by the appellant/petitioner-husband on various grounds.



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8. This Court has perused the entire materials and on perusal of records there is no substantial question of law involved in this case. It is well settled law that the second appeal under Section 100 of C.P.C only lie, where the case involves a substantial question of law. In the present case the trial Court has accepted the version of petitioner and granted divorce. The first appellate Court reversed the findings of the trial Court and dismissed the petition. In the second appeal though the appellant /petitioner has raised grounds, there is no substantial question of law involved and thereby the present second appeal is liable to be dismissed.

9. In the result, the Civil Miscellaneous Second Appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.

07.02.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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1. The Principal District Court, Virudhunagar District
2. The Sub Court, Sivakasi
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL,J.

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