



C.M.S.A(MD)No. 2 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 26.04.2024

CORAM

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

C.M.S.A(MD)No.2 of 2022

C.Palani

... Appellant / Appellant / Petitioner

Vs.

P.Azhagumeena

... Respondent / Respondent / Respondent

PRAYER :-

This Civil Miscellaneous Second Appeal is filed under Section 28 of C.P.C. read with Order 42 Rule 1 of C.P.C., against the fair and decreetal order dated 02.08.2021 made in C.M.A(HM)No.15 of 2018 on the file of the IVth Additional District Court, Madurai, confirming the order and decreetal order dated 22.02.2013 made in H.M.O.P.No.49 of 2009 on the file of the Sub Court, Melur.

For Appellant : Mr.A.Sivasubramanian

For Respondent : Mr.P.Ganapathi Subramanian



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JUDGMENT

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This Civil Miscellaneous Second Appeal is filed against the fair and decretal order dated 02.08.2021 made in C.M.A(HM)No.15 of 2018 on the file of the IVth Additional District Court, Madurai, confirming the order dated 22.02.2013 made in H.M.O.P.No.49 of 2009 on the file of the Sub Court, Melur.

2. Learned counsel for the petitioner would submit that H.M.O.P.No.49 of 2009 was filed by the appellant herein seeking the decree of divorce on the ground of cruelty and after full trial, the trial Court dismissed the petition by the judgment dated 22.02.2013, against which a Civil Miscellaneous Appeal in C.M.A.No.15 of 2018 is filed before the IV Additional District Court, Madurai. That also came to be dismissed by judgment dated 02.08.2021. Against which this Civil Miscellaneous Second Appeal is filed in the year 2022.

3. Pending the Civil Miscellaneous Second Appeal, a compromise was reached between the parties out of the Court. The terms of compromise was also filed before this Court which reads as under:

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MEMORANDUM OF JOINT COMPROMISE

The Parties above named begs to submit as follows:

1. The petitioner and respondent got married on 05.09.2003 and out of their wedlock on 15.06.2004 blessed with a female child Anushya. Due to matrimonial disputes and differences, the Appellant preferred Divorce Petition in H.M.O.P.No.49 of 2009 on the file of Sub Court, Melur Camp Court, which was dismissed by the order dated 22.02.2013. As against the same Appellant preferred C.M.A(H.M)No.15 of 2018 on the file of IV Additional District Court, Madurai, which was also dismissed on 02.08.2021.

2. Aggrieved against the said Judgment and Decrees, the aforementioned Civil Miscellaneous Second Appeal has been preferred.

3. The Parties submit that pending Appeal, by the interference of the elders of the community and family members and taking note that the Petitioner and respondent are living separately right from 2009, thereby the marriage being irrevocably broken down, the parties came to the mutual understanding that it will be in the interest of both the parties that the marriage be dissolved and they have voluntarily and of their own free will have arrived at a compromise in the following terms :-

a. The Appellant has agreed to pay Rs.5,00,000/- towards full and final settlement as permanent alimony towards the respondent and their daughter Anushya. The said payment has been made today as cash payment today i.e.26.04.2024.



b. The respondent hereby declares that as early as 05.03.2003 the entire gold jewels have been taken by the respondent and she is in possession of the same. Further, the Motorcycle TVS 50 is also in continuous possession of the respondent right from 2004.

c. The respondent hereby declares that all the Sreedhana articles have been taken by the respondents as early as 21.09.2008.

d. The Appellant has handed over the 1/2 sovereign gold ring and wrist watch to the respondent today.

e. The Respondent hereby agreed to withdraw the maintenance case filed in M.C.No.20 of 2022 on the file of Judicial Magistrate, Manapparai. The Respondent and daughter Anushya agreed that they will not make any further claim as against the Appellant and his relatives.

f. Both parties agreed that they will not make any allegation with each other and will not interfere in personal life of each other.

4. The Respondent hereby declares that there are no articles and money due to either her or her daughter and they have no claim against each other.

The Appellant and respondent jointly pray that this Hon'ble Court may be pleased to record the Joint Compromise Memo and consequently grant Decree of Divorce by dissolving the marriage dated 05.09.2003 and pass suitable orders and thus render justice."



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4. The parties are also present before this Court. A sum of Rs.5 Lakhs was exchanged between them. So also 1/2 sovereign of gold jewel and a wrist watch were exchanged. The respondent / wife also received the amount, gold ring and the wrist watch. No other article is remained to be handed over by the petitioner. Apart from this proceedings, M.C.No.20 of 2022 is also pending before the Judicial Magistrate, Manapparai, claiming maintenance amount by the respondent. Now the respondent agrees to withdraw the above said maintenance case. Except this, no other proceeding is pending. It is agreed by both of them that they are living separately from the year 2009.

5. In view of the long separation between the parties, they need not be directed to file a fresh petition under Section 13 (b) of Hindu Marriage Act, for mutual divorce. Learned counsel for both parties would submit that in view of the compromise between the parties, a decree of mutual divorce may be granted by this Court.

6. In view of the above submissions and by considering the long separation of the parties, this Civil Miscellaneous Second Appeal is allowed



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by converting the original petition as a petition under Section 13(b) of the Hindu Marriages Act, divorce is granted to the parties by waiving the waiting period, by considering the duration of the pendency of the litigation. No costs.

26.04.2024

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

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To

- 1.The IVth Additional District Judge, Madurai.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN, J.

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