



C.M.A.(MD).No.1142 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 15.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1142 of 2018

and

C.M.P(MD) Nos.11726 of 2018 and 8854 of 2024

Arockia Arputhamary @
Arputha Jesita

... Appellant/Respondent

-vs-

S.Selvaraj

... Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 55 of Indian Divorce Act, against the order and decretal order passed in I.D.O.P.No.91 of 2015, dated 27.08.2018, on the file of the learned Principal District Judge, Thanjavur.

For Appellant : Mr.G.Karnan

For Respondent : Mr.P.Veerapandi

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the appellant/wife, challenging the order of divorce granted in I.D.O.P.No.91 of 2015, on the file of the Principal District Court, Thanjavur.



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2. The respondent herein had filed the above said application for divorce on the ground of desertion. According to the husband, they got married, on 04.04.1991, in a Church and they are blessed with two daughters, namely, Lavanya and Jenifer and one son, namely, Aravind. As on today all the three children are majors.

3. The respondent/husband has further contended that after marriage, the wife was expressing that she was not willing to live with him and she would like to live permanently at Thanjavur instead of Nagapattinam. In the month of January 2001, she had left the matrimonial home and thereafter, she has not returned. On 16.04.2001, a legal notice was sent by the wife alleging that the husband has got remarried. The respondent had sent a reply notice on 23.04.2001 calling upon her for a reunion. However, the wife has not returned. Thereafter, the wife had approached the learned Judicial Magistrate No.1, Thanjavur, for maintenance. The husband has filed divorce application, in July 2014 contending that from 2001 onwards, she has deserted him without assigning any proper reasons.

4. The appellant/wife had filed a counter contending that her husband has started to live with one Madhivadhani and only because of the illicit



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relationship of her husband, she was forced to stay away from her husband.

Therefore, the same cannot be treated as desertion.

5. The petitioner had examined himself as P.W.1 and the respondent had examined herself as R.W.1. On the side of the petitioner, Exs.P1 to Ex.P3 were marked and on the side of the respondents, Ex.R1 and Ex.R2 were marked.

6. The trial Court, after considering the submissions made on either side, and after perusing the material records, has arrived at a finding that the petitioner and the respondent are living separately for more than 13 years and the same is also admitted by him during the deposition and there is no possibility of reunion. On the basis of the above said facts, the trial Court has proceeded to grant an order of divorce in favour of the husband. Challenging the same, the present appeal has been filed by the wife.

7. According to the learned counsel appearing for the appellant, the trial Court ought to have considered the plea of desertion raised by the husband and defence of the wife on its merits. Without considering the pleadings of the parties, the trial Court has proceeded to grant an order of divorce merely



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on the ground that the husband and wife are living separately for more than 13 years. He further contended that the wife is having a reasonable cause to stay away from the husband, and the same cannot be treated as desertion. He further pointed out that the husband has started illicit relationship with one Madhivadhani, which has resulted in the wife staying away from the husband. In such circumstances, it is not a desertion as contemplated under the Divorce Act. Hence, he prayed for allowing this appeal.

8. Per contra, the learned counsel appearing for the respondent herein had contended that the wife during her cross examination has specifically deposed that she is agreeable for a divorce. In such circumstances, the appeal filed by the wife is not at all maintainable and the decree for divorce may be confirmed.

9. I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

10. The appellant and the respondent herein are living separately for the past 13 years. The wife had sent a legal notice on 16.04.2001 for reunion. Though the husband has sent a reply notice on 23.04.2001 agreeing for a



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reunion, the wife has not proceeded further in accordance with the reply notice. The wife has been examined as RW.1 and during her cross examination, she has specifically admitted that she is agreeable for a divorce.

11. This Court also considered the fact that all the children have attained majority and they are married and living separately. That apart, the wife is also receiving maintenance through the orders of the Court. In such circumstances, this Court does not find any reason to interfere in the order of divorce granted by the trial Court and there are no merits in this appeal.

12. Accordingly, this Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs. Consequently connected Miscellaneous Petitions stand closed.

15.07.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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1. The Principal District Judge,
Thanjavur.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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