



C.M.S.A(MD)Nos.26 & 28 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 30.09.2024

CORAM:

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.S.A(MD)Nos.26 & 28 of 2017

Kalaivani

... Appellant
(In Both the Case)

Vs.

Radhakrishnan

... Respondent
(In Both the Case)

Prayer in C.M.S.A(MD)No.26 of 2017 : This Civil Miscellaneous Second Appeal filed under Section 28 of the Hindu Marriage Act, r/w Section 100 of CPC, to set aside the fair and decreetal order, dated 22.03.2017 made in H.M.C.M.A.No.10 of 2015 on the file of the Additional District cum Sessions Court, Theni at Periyakulam, which confirmed the fair and decreetal order in H.M.O.P.No.150 of 2008, dated 06.11.2015 on the file of the Sub Court, Periyakulam and pass such other are further order as this Court.

Prayer in C.M.S.A(MD)No.28 of 2017 : This Civil Miscellaneous Second Appeal filed under Section 28 of the Hindu Marriage Act, r/w Section 100 of CPC, to set aside the fair and decreetal order, dated 22.03.2017 made in H.M.C.M.A.No.11 of 2015 on the file of the



C.M.S.A(MD)Nos.26 & 28 of 2017

Additional District cum Sessions Court, Theni at Periyakulam, which confirmed the fair and decreetal order in H.M.O.P.No.168 of 2008, dated 06.11.2015 on the file of the Sub Court, Periyakulam and pass such other are further order as this Court.

In Both the Case:

For Appellant : M/s.S.Devasena

For Respondent : Mr.M.Mohamed Ibram Saibu
for M/s.Ajmal Associates

COMMON JUDGMENT

The wife aggrieved by the decree of divorce granted on the petition filed by the respondent/husband and the dismissal of her petition for restitution of conjugal rights has preferred these Civil Miscellaneous Second Appeals.

2. The facts leading to the filing of these appeals are as follows:

a) The appellant and the respondent got married on 16.09.2007 as per Hindu Rites and Customs. Difference of opinion arose between the parties within two months from the date of marriage and the appellant and the respondent lived separately since then.



C.M.S.A(MD)Nos.26 & 28 of 2017

WEB COPY

b) The respondent filed H.M.O.P.No.150 of 2008 praying for divorce on the ground of cruelty stating that the appellant had filed false complaints against him to his employer as well as to the police.

c) The appellant filed a counter denying all the averments in the petition for divorce and stated that it was the respondent, who had caused cruelty to her; that the respondent had demanded jewels and dowry from the appellant and because the appellant did not accede to the demands, the respondent had come up with false averments for divorce.

d) The appellant filed a petition for restitution of conjugal rights in H.M.O.P.No.168 of 2008 which was opposed by the respondent stating that the averments in the said petition were not genuine and has been filed only to neutralise the divorce petition filed by the respondent.

e) The Trial Court after considering the evidence on record allowed the petition for divorce filed by the respondent and dismissed the petition for restitution of conjugal rights filed by the appellant. The appellant had challenged both the judgments before the Additional District cum Sessions Court, Theni in H.M.C.M.A.Nos.10 and 11 of 2015 respectively.

f) The Lower Appellate Court dismissed both the appeals. As



C.M.S.A(MD)Nos.26 & 28 of 2017

against which, the present Civil Miscellaneous Second Appeals have been preferred.

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3. The learned Counsel for the appellant submitted that the Courts below have erroneously appreciated the evidence on record; that the respondent had not established cruelty; that the averments made by the respondent in the petition for divorce only relate to petty quarrels between husband and wife; and that therefore, since the judgments of the Courts below are perverse, they are liable to be set aside.

4. The learned Counsel for the respondent, per contra submitted that the judgments of the Courts below are based on the evidence on record and therefore, no interference is called for; that the evidence adduced on the side of the respondent would show that the respondent was subjected to cruelty and in any case, the appellant and the respondent are living separately since 2007 and the marriage is dead and irretrievably broken down.

5. The following substantial questions of law was framed by this



C.M.S.A(MD)Nos.26 & 28 of 2017

Court at the time of admission in C.M.S.A(MD)No.26 of 2017:

"a) Whether a wife is unable to have sexual relationship with her husband after receiving harassment at his hands amounts to cruelty?

b) Whether a husband is entitled for decree of divorce alleging that the wife is having psychological problem after harassing her?"

6. The averments in the claim petition would show that the appellant and the respondent hardly lived together for about two months; that the appellant had refused to return to the respondent's house after she went to her parent's house for Diwali festival; that since the appellant suffered from some ailments, she had taken treatment in a hospital at Chennai and when the respondent attempted to take her back, the appellant refused and had insulted the respondent; that in spite of mediation held by the elders of the family, no settlement could be arrived at; that hence, the respondent had sent a notice seeking consent divorce from the appellant; and that since the appellant did not respond to the said notice, he had filed the divorce petition.

7. The appellant opposed the divorce petition and had stated that she



C.M.S.A(MD)Nos.26 & 28 of 2017

did not suffer from any ailment and it was false to say that she had ill-treated the respondent and that it was the respondent, who had demanded dowry and ill-treated her.

8. The evidence adduced on the side of the respondent and the appellant are substantially the same as their pleadings. The evidence discloses that the appellant had lodged a police complaint before the Theni All Women Police Station against the appellant and his parents. The appellant had also admitted in her evidence that the respondent's mother was arrested and was in judicial custody for nearly five days. Exhibit P.2 would show that the appellant had taken treatment for various ailments and would further show that the appellant had not allowed the respondent to consummate the marriage. The evidence also discloses that the appellant had subjected the respondent to cruelty by insulting him and his family members. On the basis of the above evidence, the Courts below found that the respondent had established cruelty and therefore, entitled to decree of divorce on the said ground. The evidence further does not suggest that the respondent subjected the appellant to cruelty. Therefore, the appellant was not justified in denying conjugal relationship with the



C.M.S.A(MD)Nos.26 & 28 of 2017

respondent. The evidence also does not reveal that the appellant suffered from any mental or psychiatric disorder.

9. The findings of the Courts below that the respondent had suffered cruelty due to the false complaint and denial of conjugal rights cannot be faulted. The substantial questions of law are answered accordingly. Hence, both the Civil Miscellaneous Second Appeals stand dismissed. There shall be no order as to costs.

30.09.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes

BTR

To

1.The Additional District cum Sessions Court,
Theni at Periyakulam.

2.The Sub Court,
Periyakulam.

3.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.S.A(MD)Nos.26 & 28 of 2017

SUNDER MOHAN, J.

BTR

C.M.S.A(MD)Nos.26 & 28 of 2017

30.09.2024