



WEB COPY



C.M.A.No.1093 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 18.12.2024

Delivered On: .01.2025

CORAM:

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL**

C.M.A.No.1093 of 2016

Amutha

... Appellant

VS.

1.G.Dhanasekar

2.Bhoopalan

... Respondents

Prayer :- CMA filed under Section 19 of the Family Court Act, as against the decree and judgment passed by the learned Family Court Judge, Chengalpet, in O.P.No.135 of 2015 dated 02.11.2015.

For Appellant : Mr.S.Vasudevan

For respondents : Notice served. No appearance.



C.M.A.No.1093 of 2016

WEB COPY

JUDGMENT

J.NISHA BANU, J.

This CMA has been filed by the appellant/wife as against the decree and judgment of dissolution of marriage passed in favour of the 1st respondent/husband in O.P.No.135 of 2015 [HMOP.No.225 of 2007] dated 02.11.2015 on the file of Family Court, Chengalpet.

2. Even though notice served on the respondents, there is no appearance for the respondents either personally or through counsel.

3. The first respondent/husband filed HMOP for divorce under Section 13(1)(i) and (ib) of the Hindu Marriage Act, 1955. The learned Judge, Family Court, after fullfledged trial, decreed the said OP in favour of the 1st respondent/husband by order dated 02.11.2015. Challenging the same, the appellant/wife has preferred the present CMA.

4. The appellant and the first respondent got married on 12.08.1983 and three daughters were born to them. It is alleged by the 1st respondent that the appellant



C.M.A.No.1093 of 2016

developed illicit intimacy with one Boopalan viz., the 2nd respondent, hence the matter was placed before the local Panchayatdar. The appellant stated before the Panchayatdars that she will live separately and a letter dated 12.07.1989 has been given wherein, the relatives and panchayatdars signed. From 12.07.1989, the appellant and the 1st respondent are living separately. Subsequently, the 1st respondent shifted his residence to Vadakkupattu Village at Sriperumbudur and he has been living separately for more than 14 years and he filed HMOP for divorce.

5. Before the trial court, on the side of petitioner/husband, 3 witnesses were examined and four documents were marked. On the side of respondent/wife and another, 3 witnesses were examined but no document was marked.

6. The learned Judge, trial court, after elaborate examination of evidence and arguments pointed out that wife has not filed any petition for conjugal rights, further, in the written statement, she did not seek for reunion with the petitioner/husband; petitioner/husband and the 1st respondent/wife are living separately for 20 years; husband got married to one Vijaya and living with the 2nd wife and got two children which has been admitted by both sides; no petition filed



C.M.A.No.1093 of 2016

by the 1st respondent/wife as against the said 2nd marriage of the husband; further

the 1st respondent/wife has filed only maintenance petition against the husband and that the three daughters of the petitioner/husband and the 1st respondent/wife have already got married and living in their matrimonial home; the 1st respondent/wife admitted that she is living separately for the past 20 years as well as admitted that she is in extramarital affairs with the 2nd respondent in the cross examination. The learned Judge, trial court, therefore, concluded that the marriage took place on 12.08.1983 between the petitioner/husband and the 1st respondent/wife is dissolved.

7. The learned counsel for the appellant/wife would submit that even before the dissolution of 1st marriage, the 1st respondent/husband got married to Vijaya and gave birth to two children and therefore, being a wrong doer, he cannot maintain a petition for divorce. It is further submitted that divorce petition was filed by the husband for the purpose of avoiding payment of pension and other benefits to the legally wedded wife/appellant. The learned counsel for the appellant thus submitted that the divorce granted by the trial court to the husband is to be set aside as the 1st respondent/husband has not approached the court with clean hands. The learned counsel for the appellant relied on the judgment of the Honourable Supreme



C.M.A.No.1093 of 2016

Court reported in **(2013) 9 SCC 1 [DARSHAN GUPTA VS. RADHIKA GUPTA]**

and submitted that when wife remains away from the husband for the stipulated duration, it would not be open to a husband to seek dissolution of marriage on the ground of desertion.

8. We have given our consideration to the submissions of the appellant counsel and thoroughly gone through the impugned order of divorce granted in favour of the husband.

9. The evidence produced before the trial court leaves no room for us but to confirm the judgment of dissolution of marriage as both sides admitted that they are living separately for over 20 years. It would also be relevant to note that the appellant herein/wife has not expressed her desire to join her husband and to restore her relationship with her husband. Therefore, this Court concludes that there was no truthful attempt taken on the part of the wife to join her husband from the day of their initial separation.



C.M.A.No.1093 of 2016

10. In the case on hand, the wife had voluntarily deprived her husband and cohabitation for years. In this regard, it is useful to refer to the judgment of the Supreme Court in **Romesh Chander v. Savitri** ((1995) 2 S.C.C. 7), wherein the Supreme Court held that, "marriage being dead, both emotionally and practically, continuance of marital alliance for namesake would be prolonging the agony and affliction and would be cruelty” .

11. Despite our aforesaid conclusions, there is irretrievable breakdown of marriage and the first respondent/husband was married to one Vijaya and having two children and living his life with the 2nd wife. At these circumstances, reversing the trial court judgment will not bring justice to the parties. On thoughtful examination of the matter, we confirm the judgment of divorce granted to the 1st respondent/husband and thereby the appeal stands dismissed. No costs.

[J.N.B.J.]

[R.S.V.J.]

29.01.2025

Index: Yes/No
Internet: Yes/No
nvsri

Page No.6/8



C.M.A.No.1093 of 2016

To

WEB COPY The learned Judge,

Family Court Judge, Chengalpet.



WEB COPY



C.M.A.No.1093 of 2016

J.NISHA BANU,J.

And

R.SAKTHIVEL, J.

nvsri

**Judgment in
CMA.No.1093 of 2016**

29.01.2025