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S. Thanikodi Vs. Ramuthayee

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Court : Chennai

Decided On : Feb-11-1985

Reported in : AIR1986Mad263

Judge : Maheswaran, J.

Acts : Hindu Marriage Act, 1955 - Sections 9 and 23(2)

Appeal No. : C.M.S.A. No. 76 of 1984

Appellant : S. Thanikodi

Respondent : Ramuthayee

Advocate for Pet/Ap. : K.J. Ghandran, Adv.

Judgement :

1. This Civil Miscellaneous Second Appeal is directed against the order of the learned First Additional Subordinate Judge, Madurai, dismissing the petition by the husband for restitution of conjugal rights. The husband-appellant filed a petition against the wife, the respondent, seeking restitution of conjugal rights. The Courts below have clearly found that the wife has filed a suit for maintenance and that this application for restitution is filed as a counterblast to that suit for maintenance.

2. The only ground, the counsel for the appellant takes is that the Courts below erred in not attempting a reconciliation between the parties. It is no doubt true that

S. 23(2) of the Hindu Marriage Act casts a duty on the Court in the first instance, in a matrimonial cause, to bring about a reconciliation between the parties. But, it. is only when the Courts find that there may be some chance of saving the marriage that the Court would try to make a rapprochement and not otherwise. The Courts below have not attempted reconciliation obviously because they did not find any chance of the parties coming together. The failure to make such an attempt will no doubt amount to an omission, but it will not take away the jurisdiction of the Court to pass a decree for restitution or to dismiss a claim for restitution. No substantial question of law arises in this case. The civil miscellaneous second appeal is dismissed in limine.

3. Appeal dismissed.

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