



C.M.S.A.No.67 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 12.04.2023	Pronounced on 28.04.2023
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CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.S.A.No.67 of 2021

and

C.M.P.No.14057 of 2021

Shanthalakshmi,
W/o.Muruganandham,
No.3/85, Kandiappa Gounder Street,
Subbegoundanpudur Post,
Pollachi Taluk.

... Appellant

Vs.

Muruganandham,
S/o.Srinivasan,
No.1120, Pushpagirivelan Nagar,
Dharapuram Road,
Udumalpet.

... Respondent

Prayer: Appeal filed under Section 28 of Hindu Marriage Act r/w. Section 100 of the Civil Procedure Code against the Judgment and Decree dated 13.08.2020 made in CMA.No.8/2019 on the file of the Court of the Principal Sessions Judge, Tiruppur, confirming fair and final order dated 04.12.2018 made in HMOP.No.185/2015 on the file of the Court of Subordinate Judge, Udumalpet.

For Appellant : Mr.R.Nandhakumar

For Respondent : Mr.C.Kesavan



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J U D G M E N T

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Appeal filed against the Judgment and Decree dated 13.08.2020 made in CMA.No.8/2019 on the file of the learned Principal Sessions Judge, Tiruppur, confirming fair and final order dated 04.12.2018 made in HMOP.No.185/2015 on the file of the learned Subordinate Judge, Udumalpet.

2.The Wife is the Appellant herein. For the sake of convenience, parties are referred to as respondent (husband) and appellant (wife).

3.The respondent (husband) filed HMOP No.185 of 2015, seeking dissolution of marriage between the parties under Section 13(1)(a) of the Hindu Marriage Act. After trial, the HMOP was allowed, divorce was granted. On appeal by the wife in CMA.No.8 of 2019, the same was dismissed and hence this CMSA.

4.At the time of admission, the following substantial questions of law were framed:

(i) Whether the Courts below are justified in holding that the Appellant/Wife had treated the Respondent/Husband with cruelty in the absence of any legal evidence to prove the



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allegations made in the Petition and against the Appellant/Wife?

(ii) Whether the Courts below was just, right and proper in placing burden of proof on the Appellant/Wife to prove that she has not subjected the Respondent/Husband to cruelty by observing that she has not proved the allegations made in her deposition as RW1 as against the conduct of Respondent's Mother, when such statement/allegation in same connotation was not specifically alleged or pleaded by the Respondent as ground for seeking divorce?

(iii) Whether the Court below has jurisdiction and power to apply the doctrine of irretrievable break down of marriage as a ground for granting divorce, de hors the provisions relating to the ground for divorce stipulated u/s.13 and 13-B of the Hindu Marriage Act, 1955?

(iv) Whether non filing of restitution of conjugal rights by the Wife is the valid point to get decree of divorce? and

(v) Whether the explanation offered by the Wife in support of her allegation being used as admission in support of the averment made by the Husband?

5.The short facts for determination of Appeal are as follows:

5(a).Both in the Petition as well as in the evidence, PW1/Husband has averred that the marriage between the appellant (wife) and respondent (husband) was solemnized on 12.06.2013 as per Hindu Rites and Customs at Jothi Lingeswarar Temple, Pollachi. After marriage, both of them started their matrimonial life at Udumalpet and lived along



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with Respondent's parents. The appellant (wife) was a divorcee and the present marriage is her 2nd marriage. respondent (husband) is a lorry mechanic and the appellant (wife) has completed B.Com. The appellant (wife) used to tell that the respondent (husband) studied only 10th standard and she had studied up to B.Com., and only because she is a divorcee, she agreed to marry the Respondent. She claimed to be a short tempered and she used to quarrel with the respondent (husband) for no reasons. The appellant (wife) refused to have intercourse and she has not washed clothes of the respondent (husband) and she had beaten him with Plate.

5(b).When the said acts are questioned, the appellant (wife) would threaten that her brother Rajkumar was a Police and she will put the Respondent's family in prison. To lead a luxury life, the appellant (wife) has tortured him in many ways and she left home without permission, refused to return and demanded for separate house at Pollachi, where her brother Rajkumar was working and if not, she threatened to divorce the Respondent. With no other option, the respondent (husband) took house at Pollachi for rent for a sum of Rs.4,000/- per month and started to live separately. Since the respondent (husband) was earning Rs.300/- per day,



he found difficult to pay the rent.

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5(c).The appellant (wife) uttered bad about the character of Respondent's Mother. It is also alleged that the appellant (wife) used filthy and disrespectful words on his parents and asked him to die or otherwise, she will poison the food to remove him. On such incident, the respondent (husband) got scared and when he tried to make a criminal complaint, the appellant (wife) and her brother made a complaint against him and before Police, the appellant (wife) said that she was living separately for 3 months and at that time, her brother Rajkumar threatened him and obtained signatures in a letter.

5(d).It is further alleged that once in a week, the appellant (wife) and her brother used to threaten him by sending him to prison and thereafter, the appellant (wife) left the respondent (husband) by stating that she cannot continue to live with him.

6(a).In the counter as well as in the evidence of RW1/Wife, it is stated that even before marriage, the appellant (wife) disclosed the factum of earlier marriage and about her divorce, have also given him



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documents relating to the same and have also spoken with him separately for three times and only thereafter, agreed for marriage.

6(b).It is further averred that only after marriage, the appellant (wife) came to know that the respondent (husband) agreed for marriage only on demand of 100 sovereigns of gold and for a cash to a sum of Rs.1,00,000/- as dowry and from the date of engagement, the respondent (husband) family used to change their attitude, she was in a strong belief that the respondent (husband) will take care of her properly as her 1st marriage was broken down by choosing a wrong person. However, she lived happily only for few days and thereafter, on showing interest to get 100 sovereigns, the respondent (husband) and his Mother created problems and started to beat and harass the appellant (wife) by torturing her.

6(c).One day the respondent (husband) introduced one A.V.Selvakumar as his friend and asked her to treat him properly and on his compulsion, she also adjust with him. However, the said person involved in all family problems and all the Respondent's family members used to act only on his words and decision. Thereafter, they taken a



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separate house at Pollachi and even then they were not happy. The respondent (husband) and his Mother planned and driven the appellant (wife) to her parent's home and all the steps taken on her side for re-union get turned down

7(a).It remains to be stated that at paragraph 6 of the counter affidavit, the appellant (wife) had categorically denied the allegation made by the respondent (husband) at paragraph 9 of the Petition that she had uttered bad about the conduct of his Mother and his denial is categorical.

7(b).It is a specific stand of the Wife in the counter statement that the involvement of one A.V.Selvakumar in their family and his interference in all the family issues.

8.Since the trial Court has held that the appellant (wife) demanding of setting up of separate matrimonial home, away from the Mother, for the reason that one third party by name A.V.Selvakumar is interfering in all his family issues and she had uttered bad about the conduct of the Mother of the respondent (husband), the lower Appellate Court has held



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that since the marriage is irretrievably breakdown and the appellant (wife) has not filed any petition for restitution of conjugal rights, the respondent (husband) is entitled to divorce, confirming the decree of divorce and hence the present CMSA.

9.Heard the learned counsel appearing on either sides.

10(a).After hearing both the parties and after perusing the evidence of PW1 and PW2, Ex.P.1 to Ex.P.9 and also evidence of RW1/Wife, RW2/independent witness and Ex.R1, I find that both the Courts below had not appreciated the evidence of RW1 and Ex.R1 in a proper prospective.

10(b).The allegation in the application for divorce filed by the Husband with the Wife, is uttering bad about his Mother and statement in the deposition of the Wife (as RW1) in respect of conduct of the Respondent's Mother that one A.V.Selvakumar are totally in different context. In this connection, the evidence of RW2/independent witness assumes significance.



11.The evidence of RW2 is in correct perspective. The said witness concurred with the facts alleged by the appellant (wife) that A.V.Selvakumar, who was working as AD in TNEB used to come to the Respondent's house and he used to involve in all issues of the family and the entire family used to hear his words and his words are highhanded in the family. The said evidence was also not refuted by the Respondent (husband). However, on the other hand, the respondent (husband) and his mother in their cross examination have simply deposed that they didn't know any such person, assumes significance.

12(a). Here in the instant case, the case of the respondent (husband) is specific that the appellant (wife) had spoken about the conduct of his mother. The appellant (wife) has specifically stated the name of the person and post of the person, working place of that person and she had spoken about the same in connection with the reason for demand for setting up a separate home, away from her mother-in-law's home, assumes significance.

12(b). When the appellant (wife) has specifically stated about the person and gave particulars and also cited the same as a reason, it



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remains to be stated that both the mother-in-law as well as the respondent (husband) have simply denied the about the said person and hence, this Court is of the considered view that the respondent (husband) has not come to the Court with clean hands and therefore, an adverse inference has to be drawn against him.

13. My attention was drawn to Ex.R1/complaint given by Wife to the Police Station. On the face of it, it shows that though she made allegations of demand of dowry, she prayed and requested to take steps to reunite her with the respondent (husband). It is also pertinent to note that based on the said complaint, no further action was also taken, as the appellant (wife) was only intended to reunite with the respondent (husband) and she was not interested to precipitate the said Complaint and offend the respondent (husband) and his parents. Therefore, taking adverse inference on the said Complaint given by the appellant (wife) and granting relief of divorce is totally erroneous and perverse.

14. With regard to the above, it is to be stated that snap answer for different questions cannot be taken as admission of witness in respect of allegation made by the Husband. The Husband himself has not taken any



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steps to probablise his version. By taking a line from the deposition of the appellant (wife) with regard to relationship of Respondent's Mother with one A.V.Selvakumar, which was not at all pleaded, alleged or averred by the respondent (husband) in his Petition or evidence as against the appellant (wife) as a ground of cruelty and arriving at a conclusion and finding that the respondent (husband) suffered from cruelty, on the ground the appellant (wife) has not proved the statement made in her deposition (RW1), is erroneous.

14(a). It remains to be stated that it is not the case of the respondent (husband) that the said A.V.Selvakumar is an imaginary person, also assumes significance and no evidence has been let in by the respondent (husband), who had filed the divorce on the ground of 'cruelty', to project that the alleged projection of A.V.Selvakumar is an imaginary person also lends credence to the evidence of RW1 and independent evidence of RW2.

14(b). The respondent (husband) as PW1 has filed HMOP.No.185 of 2015 on the pleadings that “எதிர்மனுவாதியானவர் ஆடம்பரமாக வாழ

வேண்டுமென்று கேட்டு மனுவாதியை பணம் கேட்டு பல வழிகளில்



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கொடுமைப்படுத்தினார். எதிர்மனுவாதி கேட்டபடி செய்யாவிட்டால் தன்னிச்சையாக

அனுமதி பெறாமல் தனது பெற்றோர் வீட்டிற்கு சென்றுவிட்டு எதிர்மனுவாதி வரமறுத்துவிட்டார், ”, “அத்துடன் தனிக்குடித்தனம் செல்ல வேண்டும் என்றும் அதுவும் தனது தம்பி ராஜ்குமார் வேலை செய்யும் பொள்ளாச்சியிலேயே வாடகை வீடு பார்க்க வேண்டும் என்றும் இல்லையென்றால் மனுவாதியை விவாகரத்து செய்துவிடப்போவதாக எதிர்மனுவாதி மிரட்டினார்”, so is his evidence.

14 (c). The appellant (wife) in the counter statement at paragraph No.6 stated that “சமயத்தில் திடீரென ஒரு நாள் ஒரு செல்வகுமார் என்பவரை அறிமுகப்படுத்தி அவர் மனுவாதியின் நண்பர் என்றும், ஆவரை நன்றாக கவனித்துக் கொள்ள வேண்டும் என்றும் மனுவாதி வற்புறுத்தியதால் அவரையும் இந்த எதிர்மனுவாதி அனுசரித்து நடந்து கொண்டார். ஆனாலும், குடும்பத்தின் அனைத்துப் பிரச்சனைகளிலும் அவருடைய தலையீடு இருக்கும், எல்லாவற்றிலும் அவருடைய முடிவுதான் செய்படுத்தப்படும். பின்வு மனுதாரருடைய வேலை காரணமாக கோவைக்குச் சென்று தனிக்குடித்தனம் இருக்கலாம் எனக்கூறி பின்பு மனுவாதி பொள்ளாச்சியில் வீடு பார்த்து அங்கு ஒரு மாதம் வசித்து வந்தனர். ஆனாலும் குடும்ப வாழ்க்கை மகிழ்ச்சியாகவும், சீராகவும் அமையவில்லை. மனுவாதியும், அவருடைய தாயாரும் திட்டமிட்டு எதிர்மனுவாதியை அவருடைய பெற்றோர் வீட்டுக்கு துரத்திவிட்டனர்.”



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“என் மாமியாருக்கு செல்வகுமார் என்பவருடன் தகாத தொடர்பு இருந்ததாலும்,

தருமணமாகி 2 வருடமாக கரு உண்டாகி கலைந்ததால் மருத்துவர் என் கணவர் கோவையில் வேலைக்கு செல்வதால் இருவரும் ஒன்றாக இருக்க வேண்டும் என்று கூறியதாலும், தனிக்குடித்தனம் செல்ல வேண்டும் என்று கூறினேன்.”, so is her evidence as RW1.

14.(d), Thus this Court finds that, the trial Court while hearing the argument has accepted the case of the respondent (husband) that the wife has uttered bad about the character of his Mother.

14. (e). As stated supra, neither in the pleadings nor in the evidence, the respondent (husband) has not whispered anything regarding the setting up of separate matrimonial home being reason for his wife's statement. In the argument it appears that the respondent (husband) has dropped and ditched his pleadings for setting up of separate home and then developed another case from the explanation offered by the wife, as to the reason for setting up the separate home.

14 (f) Therefore, answering to the question with regard to the reason for taking separate house, the appellant (wife) as RW1 has



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deposed about the relationship of the said person with the Respondent's Mother. The allegations made by the respondent (husband) in his Petition in respect of conduct of his Mother as uttered by the appellant (wife) and the deposition of the appellant (wife) in respect of the conduct of the Respondent's Mother are not at all identical and therefore, taking inference from the said allegations made in the Petition based on the deposition of the appellant (wife) is unsustainable in law.

14(g). It is a specific evidence of wife as RW1 that as a person by name A.V.Selvakumar is visiting the matrimonial home and everyone in the house are dancing to the tune of that person and in order to avoid the sight of the person in the matrimonial home, the appellant (wife) wanted to set up a separate home for themselves and the same cannot be, at any stretch of imagination, be termed as speaking bad of mother-in-law's conduct. Any self respect woman will do such event and on similar circumstances and on happening of such state of affairs and hence, this Court finds that the reason assigned by RW1 in the witness box for setting up of the matrimonial home cannot be termed as she had uttered bad about the conduct of the mother-in-law to her husband so as to fall within the definition of 'cruelty' as defined under Section 13(1)(a) of the Act.



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14(h).Further it remains to be stated that the pleadings of the respondent (husband) is specific. The respondent (husband) has also taken up a separate house, lived for some time with the wife and again, only after the intervention of the very same person mentioned by the appellant (wife), the respondent (husband) had withdrawn from the separate house and chose to turn around and raise allegation against the appellant (wife), as if, appellant (wife) has badly spoken about the mother assumes significance and hence as stated supra, the respondent (husband) being the petitioner before the trial Court has to plead and prove his pleadings to the extent of preponderance of probability. He cannot ditch the case apart from his pleadings and the deposition and rely upon the snap answer in the cross examination, which is an explanation offered by the wife for setting up the separate home. Hence, I find that both the Courts below have not properly appreciated the pleadings and evidence of the respective parties in a proper prospective and also not properly appreciated the evidence on the lines of established principles of law. Accordingly, the said finding hereby stands vacated.

15.At this juncture, it remains to be stated that the respondent



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(husband) had not produced any evidence to show that the appellant (wife) used filthy and disrespectful words against the respondent (husband) and his parents and asked him to die or otherwise, she will poison the food to remove him and also that when the respondent (husband) tried to make a criminal complaint, the Wife and her brother made a complaint against him before the Police and at that time, her brother threatened him and obtained signatures in a letter. The respondent (husband) has not adduced any evidence to show that the appellant (wife) had subjected him to cruelty by quarreling with him, by not washing his clothes and also had beaten him with plate and also at the time of marriage, the appellant (wife) had demanded Mugurtha Saree for higher price.

16.Hence, this Court finds that though the finding is concurrent, both the Court failed to appreciate the oral evidence RW1 coupled with independent evidence of RW2 and conduct of the RW1/Wife as reflected in Ex.R1/police complaint, which goes to show that she wanted “to save the marital life” and hence, the finding rendered by the first Appellate Court that the marriage is irretrievably break down is totally not based upon the no legal evidence and hence, the said finding by the Courts



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below is liable to be vacated. Accordingly, the same is vacated.

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17.It remains to be stated that “irretrievable break down of marriage” is not mentioned as a ground for divorce in Hindu Marriage Act and hence no such relief could be granted. Accordingly, the 3rd substantial question of law is answered in affirmation in favour of the appellant (wife).

18(a).Yet another point is that non filing of the restitution petition by the appellant (wife) is not a ground to the respondent (husband) to obtain decree of divorce. Since the person who prays for divorce has to plead and prove his own pleading, failing which, he has to fall.

18(b).It is always open to the other side to defend the case of divorce without filing any petition for restitution of conjugal rights and such approach adopted by both the Courts below is both erroneous in law and is impermissible in law and accordingly held to be legally unsustainable and accordingly, the said finding is also stands vacated.

19.On over all appreciation of evidence of PW1 and PW2 and



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documentary evidence, I have no hesitation to come to the conclusion that the respondent (husband) has failed to prove the pleading and the alleged cruelty is not made out in the manner known to law and hence is not entitled for any relief and the decree of divorce granted by both the Courts below is liable to be set aside.

20. Accordingly, all the substantial questions of law are answered in affirmation in favour of the appellant (wife) and Judgment and Decree dated 13.08.2020 made in CMA.No.8/2019 by the learned Principal Sessions Judge, Tiruppur, confirming fair and final order dated 04.12.2018 made in HMOP.No.185 of 2015 by the learned Subordinate Judge, Udumalpet, is set aside. HMOP.No.185 of 2015 filed by the respondent (husband) stands dismissed.

21. In fine, this Appeal is allowed to the extent indicated above. No costs. Consequently, connected Miscellaneous Petition is closed.

28.04.2023

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order

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To

1.The Principal Sessions Judge,
Tiruppur.

2.The Subordinate Judge,
Udumalpet.



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RMT.TEEKAA RAMAN.J,

sai

Pre-delivery Judgment made in

C.M.S.A.No.67 of 2021

and

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Dated: 28.04.2023