



Civil Miscellaneous Appeal Nos.3161 & 3165 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 19.01.2023

Delivered On : 01.03.2023

CORAM

HONOURABLE MR. JUSTICE R.SUBRAMANIAN

AND

HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.Nos.3161 & 3165 of 2014

Sumathy Venu

... Appellant in both Civil Miscellaneous
Appeals

Vs.

A.R.Venu

...Respondent in both Civil Miscellaneous
Appeals

Common Prayer: These Civil Miscellaneous Appeals are filed under Sections 19 (1) of Family Court Act, 1984 and Section 28 of Hindu Marriage Act, 1955, to set aside the Judgment and Decree dated 06.08.2014 passed in HMOP.No.607 of 2006 (Dissolution of Marriage) and H.M.O.P.No.526 of 2007 (Restitution of Conjugal Rights) on the file of the Family Court, Coimbatore by allowing the appeals.

For Appellant
in both CMAs

:: Mrs.M.Sumathy Venu
(Party-in-person)

For Respondent
in both CMAs

:: Mr.K.J.Parthasarathy



COMMON JUDGMENT

SATHI KUMAR SUKUMARA KURUP.J.,

These Appeals filed by the Appellant/Wife as Party-in-person against the Judgment and Decree of the learned Judge, Family Court, Coimbatore granting decree of divorce to the Respondent/Husband in H.M.O.P.No.607 of 2006 on the ground of cruelty by the Appellant/Wife and dismissing the petition for restitution of conjugal rights filed in H.M.O.P.No.526 of 2007 by the Appellant/Wife.

2. It is the contention of the Appellant/Party-in-person that after filing of the Appeal as C.M.A.SR.No.82307 of 2014 and issuing notice before numbering the Civil Miscellaneous Appeal, the Respondent/Husband had contracted second marriage on the strength of the decree of divorce granted by the learned Judge, Family Court, Coimbatore in H.M.O.P.No.607 of 2006.

2.1. It is her contention that the grounds raised by the Husband in H.M.O.P.No.607 of 2006 were with regard to the age of the Appellant/Wife



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as if she is 5 years older than him, which is considered inauspicious. If that had been true, he should have filed petition for divorce when he was in service in Border Security Force. Having completed his period of contract with the Border Security Force on attaining the age of superannuation and after obtaining the benefit of pension, only with false averments, he had filed the petition for divorce. The learned Judge, Family Court, Coimbatore had not at all considered the evidence let in by the Wife as Respondent in the Petition filed by her Husband in H.M.O.P.No.607 of 2006 and the evidence of the Wife as Petitioner in the Petition filed by her in H.M.O.P.No.526 of 2007 seeking restitution of conjugal rights. Ignoring the plight of the Wife and the minor children, the learned Judge, Family Court, Coimbatore, had without any basis granted the decree of divorce on the ground of cruelty against the Wife and in favour of the Husband which is perverse and is to be set aside.

2.2. The Appellant/Wife invited the attention of this Court to the date of birth of the Appellant/Wife. As per the claim of the Respondent/Husband filed by him as Petitioner in H.M.O.P.No.607 of 2006 wherein the



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Headmaster of the School where the Appellant//Wife had studied till her School final, was cross-examined by the Appellant/Wife before the Family Court. In the cross-examination, the Headmaster as P.W-2 had accepted that he had not seen the person/student by name Sumathy.

2.3. It is her contention that the relying on the evidence of the said official witness, the learned Judge had arrived at a conclusion that the Wife had committed forgery regarding her date of birth in the school certificate. Based on which, the Respondent/Husband had produced a certificate before his Higher Authority in Border Security Force to get employment for his Wife as a Teacher in the Border Security Force School where the Respondent/Husband had served. Based on which, the allegation by the Respondent/Husband against the Wife that she committed forgery had been accepted by the Court and granted a decree of divorce.

2.4. It is her contention that within the same compound, there were two persons by same name i.e., Mani Assary (Carpenter) whereas the father of the Appellant/Wife was Mani Achari (Goldsmith). The two families had



children by the same name. Therefore, it is her contention that the Respondent/Husband of the Appellant viz., Venugopal had obtained the certificate regarding Sumathy D/o. Mani Assary (Carpenter) and not Sumathy, D/o. Mani Achari (Goldsmith) which was produced as document before the Court, based on which, the learned Judge had granted the decree of divorce.

2.5. It is her contention that her parents had five children. Among them, four daughters and one son. The youngest child was the son. The eldest daughter was born in 1957, second daughter was born in 1959, third daughter was born in 1963 and the Appellant is the youngest daughter and she was born in the year 1966 and her brother is younger to her and the last of five children of her parents who was born in the year 1968. Her birth and the birth of her brother were not registered whereas the date of birth of the elder sisters born in the year viz., 1957, 1959 and 1963 were registered as they were born in the Hospital. Since the Appellant was born at home, the parents failed to record and register it with the Municipal Authorities of Coimbatore. When there is no evidence regarding the date of birth of the



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Appellant, the reliance placed by the learned Judge, Family Court, Coimbatore on the alleged Transfer Certificate obtained by the Respondent/Husband as Petitioner in H.M.O.P.No.607 of 2006 from the School in which the Appellant/Wife studied, as though, it is the date of birth of the Appellant/Wife to prove his contention that she was born in 1961 and placing reliance on the same by the Court is perverse.

2.6. It is her contention that the evidence of the Appellant/Wife as Respondent before the Family Court in H.M.O.P.No.607 of 2006 was not at all considered. The learned Judge had misdirected himself and on the basis of the evidence of the Respondent/Husband, had accepted the averments made in the Petition filed by the Respondent/Husband in H.M.O.P.No.607 of 2006 seeking divorce and granted divorce which is to be set aside. The Appellant/Wife also sought to set aside the dismissal of H.M.O.P.No.526 of 2007 filed by her for restitution of conjugal rights and to grant decree of restitution of conjugal rights.



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3. The learned Counsel for the Respondent/Husband vehemently objected to the line of the arguments of the Appellant/Wife. It is his contention that as per the customs and belief of the Respondent Community (Viswa Karma Community), the male Hindu shall not contract the marriage with an elderly woman which is inauspicious for the family (தரித்திரம்).

3.1. The learned Counsel for the Respondent/Husband invited the attention of this Court to the documents filed and relied upon by the Respondent/Husband in H.M.O.P.No.607 of 2006. He also invited the attention of this Court to H.M.O.P.No.526 of 2007 filed by the Appellant/Wife for restitution of conjugal rights before the learned Judge, Family Court, Coimbatore. Both the cases were taken up together and disposed of by common Judgment by the learned Judge, Family Court, Coimbatore, dated 06.08.2014 in dismissing H.M.O.P.No.526 of 2007 filed by the Wife seeking restitution of conjugal rights and granting decree of divorce by the Husband in H.M.O.P.No.607 of 2006.



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3.2. The learned Counsel for the Respondent/Husband invited the attention of this Court to the documents filed by the Respondent/Husband in H.M.O.P.No.607 of 2006 filed by him seeking divorce viz., (I) Marriage Invitation card wherein it is shown that the fraud played by the Appellant herein as though she is a qualified Graduate Teacher (B.A., B.Ed.), (II) Transfer Certificate obtained by the Respondent/Husband from the School where the Appellant/Wife studied in Coimbatore.

3.3. The learned Counsel for the Respondent/Husband invited the attention of this Court to the date of birth of the Appellant as registered in the Transfer Certificate issued by the School, as though information furnished by the Parents of the Student as 1961.

3.4. The learned Counsel for the Respondent/Husband invited the attention of this Court to the evidence of the Respondent/Husband as P.W-1 in H.M.O.P.No.607 of 2006 and also to the cross-examination of P.W-1 by the Appellant/Wife before the Family Court. Also, the evidence of the Headmaster of the School as P.W-2 regarding the recorded date of birth of



the Appellant as Student of the School and also the evidence of the said Headmaster regarding the registration of the date of birth in the School Register.

3.5. It is the contention of the learned Counsel for the Respondent/Husband that the Respondent/Husband was serving in the Border Security Force when he had arranged for his marriage through his relatives. The family of the Appellant herein had contacted the bridegroom/Respondent herein as Husband that she is qualified as a Teacher and she had studied B.A., B.Ed. Believing the representation of the Appellant's family, the Respondent contracted the marriage. After the marriage, the Respondent/Husband wanted the Appellant herein to join him in the place of his posting as there was a vacancy for the Teacher in the School for the children of the Border Security Force Jawans/Officers. Therefore, the Respondent/Husband wanted his Wife to take up the Teacher job in the School which was run by the Border Security Force. She declined to join him on one pretext or the other. At one point of time, the Superior Officers of the Respondent/Husband sought documents regarding the



qualifications of the Appellant/Wife to appoint her as a Teacher in the School run by the Border Security Force. Therefore, the Respondent/Husband had produced the Transfer Certificate of the Appellant/Wife before the Border Security Force Officials in the place of his posting whereupon they found out that she had completed her school leaving certificate in the year 1977 wherein her date of birth had been stated as 1966. Therefore, the officials in the Border Security Force confronted the Respondent/Husband/Border Security Force Jawan that it is a forged document. If what had been stated in the Transfer Certificate is true, the Wife of the Respondent/Border Security Force Jawan should have completed 10th standard at the age of 11. Therefore, he was pulled up for producing forged document before the Border Security Force Authorities. From that point of time, Border Security Force Officials were harassing the Respondent/Husband/Border Security Force Jawan for producing forged document to obtain a Teacher job in the School for his wife. Unable to bear the harassment meted out by his Superior Officials, due to the fraud played on him by the Wife/Appellant herein, the Respondent/Husband had not extended his contract period to continue his service in Border Security



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Force. After the date of completion of the contract, even though he had 10 years service left to retire on attaining the age of superannuation, he preferred not to extend the contract. The Respondent/Husband had confronted the Appellant/Wife regarding the forged Transfer Certificate handed over to him. The Appellant/Wife evaded proper reply. The Respondent/Husband on his own obtained the copy of the Transfer Certificate from the School where the Appellant/Wife studied. On obtaining such Transfer Certificate, he came to know that her original date of birth was 1961. He had confronted the Appellant/Wife regarding the same and also regarding the false documents handed over to him which is to be placed before his superior officials to get her a job as Teacher in Border Security Force School. When the Appellant/Wife was confronted by the Respondent/Husband with true facts and about ingenuine documents, she played upon a trick on the Husband whereby she had filed a Domestic Violence Case against the Husband and Mother-in-law before the Court of Judicial Magistrate, Aluva, Kerala State. The entire family of the Husband was harassed by the Appellant/Wife to escape from the further developments by the Husband to shut him out from questioning her



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regarding her educational qualifications. Also, the Appellant/Wife filed a similar Domestic Violence Case before the Court of the learned Judicial Magistrate, Coimbatore against the Respondent/Husband and in-laws of the Appellant/Wife. When the case of Domestic Violence in D.V.A.No.45 of 2010 before the learned Judicial Magistrate was sought to be quashed by the Respondent/Husband before this Court by filing Crl.O.P.No.2171 of 2011, the Crl.O.P.No.2171 of 2011 was dismissed. Considering the fact that the Respondent/Husband was harassed by the Appellant/Wife by filing vexatious and frivolous Petitions and also sent the false documents seeking employment. The Husband/Respondent had not sought extension of contract to serve in the Border Security Force before attaining the age of superannuation and sought retirement. In the light of the above circumstances, the Husband filed H.M.O.P.No.607 of 2006 seeking divorce on the ground of cruelty by the Wife.

3.6. The Respondent/Husband as Petitioner in H.M.O.P.No.607 of 2006 had let in evidence as P.W-1. The Headmaster of the School where the Appellant/Wife studied had deposed evidence as P.W-2. The



Respondent/Husband had produced documents Ex.P-1 to Ex.P-15. The Appellant/Wife had deposed evidence as R.W-1. She had marked Ex.R-1 to Ex.R-80. On appreciation of the evidence, the learned Judge, Family Court, Coimbatore had accepted the contention of the learned counsel for the Respondent/Husband and granted the decree of divorce on the ground of cruelty and dismissed the H.M.O.P.No.526 of 2007 filed by the Appellant/Wife seeking restitution of conjugal rights.

3.7. The Appellate Court has the discretion to appreciate/assess the entire evidence available before the trial Court. When the trial Court had appreciated the evidence available before the trial Court in the light of the provisions of the Indian Evidence Act and arrived at a just conclusion on appreciation of evidence, the Appellate Court shall not disturb the finding of the learned trial Judge even though on the same set of evidence, on appreciation of the same, the Appellate Court may arrive at a just opposite conclusion.

3.8. The learned Counsel for the Respondent/Husband relied on the



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decision of the Hon'ble Supreme Court in the case of **Samar Ghosh -vs- Jaya Ghosh** reported in **(2007) 4 SCC 511** wherein it has been held as under:

“A. Hindu Marriage Act, 1955 – Section 13(1)(i-a) – “Mental cruelty” as ground of divorce – Nature and scope – Irretrievable breakdown of marriage – Refusing to sever the marriage tie despite the irretrievable breakdown – Impact and propriety of – Held, where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair – The marriage becomes a fiction though supported by a legal tie – By refusing to sever that tie, the law in such cases does not serve the sanctity of marriage; on the contrary it shows scant regard for the feelings and emotions of the parties – In such like situations, it may lead to mental cruelty – In present case, trial court had rightly concluded that the various instances in their matrimonial life, had led to grave mental cruelty to the appellant husband – Further, the High Court failed to take into consideration the most important aspect of the case that the parties had admittedly been living separately for more than 16 ½ year – The entire substratum of marriage had already disappeared. Even when the appellant was seriously ill and had to undergo a heart bypass surgery, neither the respondent wife nor any member of her family bothered to enquire as to appellant's health even on the telephone – Hence the parties had no feelings or emotions towards each other – The irresistible conclusion would be that the matrimonial bond had been ruptured beyond repair because of the mental cruelty caused by the respondent – This was a clear case of irretrievable breakdown of marriage -Any further effort to keep it alive would prove to be totally counterproductive – Even in the Supreme Court, the parties being present in Court, the appellant was not even prepared to speak with the respondent despite a request from the Court – In this view of the matter, the parties could not be



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compelled to live together – Divorce decree restored – Family Law – Special Marriage Act, 1954 – Section 27(1)(d) – Family Law – Divorce.

B. Hindu Marriage Act, 1955 – Section 13(1)(i-a) - “Mental cruelty” as ground of divorce – Nature and scope – Non-susceptibility to comprehensive definition – Approach to be followed by court in determining question of mental cruelty – Held, there cannot be any comprehensive definition of “mental cruelty” within which all kinds of cases of mental cruelty can be covered – No court should even attempt to give a comprehensive definition of mental cruelty – Reasons therefor, discussed – There can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters – The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking the various factors mentioned herein into consideration – Words and Phrases – Family Law – Special Marriage Act, 1954 – Section 27(1)(d) – Family Law – Divorce.

C. Hindu Marriage Act, 1955 – Section 13(1)(i-a) - “Mental cruelty” - Instances of – Certain illustrative, though not exhaustive instances of conduct that may amount to mental cruelty in the matrimonial context, enumerated.

D. Hindu Marriage Act, 1955 – Section 13(1)(i-a) - Mental cruelty - Instance of – Unilateral decision as to child-bearing – Effect of position and status of spouse (especially of the wife) – Wife being an IAS officer (as also the appellant husband), High Court holding that considering her position and status, it was within her right to decide when she would have a child after marriage – Unsustainability – Held, fact that appellant married an IAS officer does not mean that the normal human emotions and feelings would be entirely different – Such a vital decision as to having children cannot be taken unilaterally after marriage, and if taken unilaterally may amount to mental cruelty.”



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3.9.The learned Counsel for the Respondent/Husband relied on another decision of the Hon'ble Supreme Court in the case of ***Joydeep Majumdar -vs- Bharti Jaiswal Majumdar*** reported in ***(2021) 3 SCC 742*** wherein it has been held as under:

“Family and Personal Law - Hindu Marriage Act, 1955 – Section 13(1)(i-a) – “Mental cruelty” - Grant of divorce on ground of – Factors to be considered – For considering dissolution of marriage at instance of a spouse who alleges mental cruelty, result of such mental cruelty must be such that it is not possible to continue with matrimonial relationship – In other words, wronged party cannot be expected to condone such conduct and continue to live with his/her spouse – Degree of tolerance will vary from one couple to another and court will have to bear in mind background, level of education and also status of parties, in order to determine whether cruelty alleged is sufficient to justify dissolution of marriage, at instance of wronged party.”

3.10.The learned Counsel for the Respondent relying on the above decisions of the Hon'ble Supreme Court, sought dismissal of these Civil Miscellaneous Appeals as having no merits and to confirm the decree of divorce granted by the learned Judge, Family Court, Coimbatore.

4. Point For Consideration:

Whether the Judgment and Decree granted by the learned Judge, Family Court, Coimbatore in HMOP No.607 of 2006 filed by the Husband seeking decree of divorce and



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Civil Miscellaneous Appeal Nos.3161 & 3165 of 2014

dismissing the HMOP No.526 of 2007 filed by the Wife seeking restitution of conjugal rights are perverse? And to what other relief?

5. On consideration of the submission of the Appellant/Wife and the learned Counsel for the Respondent/Husband, on perusal of the pleadings in H.M.O.P.Nos.607 of 2006 and 526 of 2007, the grounds of memorandum of Appeal filed by the Wife as Party-in-person, the evidence of Respondent/Husband as P.W-1 and documents filed by the Respondent/Husband as Ex.P-1 to Ex.P-15 and the evidence of the Appellant/Wife and documents filed by the Appellant/Wife under Ex.R-1 to Ex.R-80 before the trial Court and the Order and decree passed by the learned Judge, Family Court, Coimbatore, it is found that the learned Judge had properly appreciated the evidence in the light of the provisions of Indian Evidence Act and arrived at a just conclusion that the Respondent/Husband is entitled to get decree of divorce.

6. On further consideration of the evidence of the Respondent/Husband as PW-1 in H.M.O.P. No.607 of 2006 (Petition filed by the husband seeking divorce on the ground of cruelty) and the



Appellant/Wife as R.W-1, and the documents under Exs.P-1 to P-15 and Ex.R-1 to R-80, the learned Judge, Family Court, had in his discussion observed that the age of the Appellant/Wife was suppressed and marriage was performed, cannot be a ground for divorce and therefore, the contention regarding the Respondent/Husband is younger to the Appellant/Wife and therefore, the marriage is to be held as void is rejected. On the other hand, the contention of the Respondent/Husband as Petitioner in H.M.O.P. No.607 of 2006 that suppressing the date of birth and age of the Appellant/Wife the marriage was performed and the false representation on behalf of the Appellant/Wife that she had completed B.A., B.Ed., and therefore, to get her employment as a Teacher in the school run by the Border Security Force wherein the certificates handed over to the Respondent/Husband by the Appellant/Wife were found to be a false and forged documents. As per the Border Security Force officials, if the contention of the Appellant/Wife is to be accepted, she could have completed her S.S.L.C., at the age of 11 since her date of birth is given as 1966 in the School Leaving Certificate and in the School Leaving Certificate, it is stated that she had completed her Schooling in the year 1977. Therefore, the higher officials of the



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Respondent/Husband confronted him with the facts that the documents furnished by the Respondent/Husband regarding the educational qualification of the Appellant/Wife is a forged document. Based on that, the higher officials of the Respondent/Husband reprimanded him for attempting to obtain a job for his wife as a Teacher through forged documents. Therefore, the reputation of the Respondent/Husband before his higher officials was damaged by the false representation of the Appellant/Wife. On that ground, he had sought divorce and also on the ground of cruelty. The conduct of the Appellant/Wife in handing over a false document is to suppress her age as though she was born in the year 1966 and completed her SSLC in the year 1977. Believing the representation of the Appellant/Wife, the husband produced the said document viz., Transfer Certificate before his higher officials seeking job for his wife in the school run by the Border Security Force for the children of the Border Security Force Jawans and Officers.

7.The learned Judge, Family Court, had accepted the contention of the Respondent/Husband as Petitioner in H.M.O.P.No.607 of 2006. While



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discussing the evidence, the learned Judge, Family Court, stated that the Appellant/Wife had represented to the Respondent/Husband that her date of birth is 04.12.1966 and her date of birth was not registered with the Registrar of Birth and Death. While deposing evidence, the Appellant/Wife had stated that the documents furnished by the husband as proof of age of the wife from the school where the Appellant/Wife studied does not belong to her and it belonged to another student by name Sumathy, D/o.Mani who was a neighbour. Ex.R-12 is the Transfer Certificate of the Appellant/Wife. The Appellant/Wife claimed that it did not belong to her and it belongs to another Sumathy, D/o.Mani. Whereas the Appellant/Wife was Daughter of Mani Achari which denotes they are Goldsmith whereas the other person was Mani Asari which denotes Carpenter.

8.The learned Judge, Family Court, had in his discussion stated that the Respondent/Husband as Petitioner in the HMOP No.607 of 2006 had summoned the Headmaster of Municipal Girls Higher Secondary School and examined the Headmaster as P.W-2 and through her Ex.P-8, P-11, P-12,



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P-13 were marked. Exs.P-8 and P-13 are photostat copy of the Appellant/Wife's Transfer Certificate. Ex.P-11, dated 05.06.1972, is the Form for admission of the Appellant/Wife to the School where she studied. Ex.P-12 is the photostat copy of the Appellant/Wife obtained from previous School where she studied. Based on the evidence of P.W-2 – Headmaster of the School where she studied, the Respondent/Husband was able to establish that the correct date of birth of the Appellant/Wife was 10.08.1961 and not 04.12.1966 as claimed by the Appellant/Wife. Also, the learned Judge, Family Court, Coimbatore had on the facts and evidence found in the course of the trial that the elder sister of the Appellant/Sumathy and Suguna were admitted in the same School on the same day as per the Registration No.5019 furnished by the School Headmaster as P.W-2. Based on Exs.P-8, P-11, P-12 and P-13, the learned Judge, Family Court, Coimbatore had arrived at a conclusion that Ex.P-13 which was sent by the Appellant/Wife to the Respondent/Husband seeking job in the Border Security Force School was accepted to be forged document.



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9.The contention of the Appellant/Wife that Ex.R-12 obtained by the Respondent and Ex.P-8 to P-11, 12 and 13 do not belong to the Appellant/Sumathy but it belongs to another Sumathy, daughter of another Mani, was not accepted by the learned Judge, Family Court, on the ground that the sister of the Appellant/Respondent in H.M.O.P.No.607 of 2006 viz., Suguna was also admitted in the same school where she was admitted. Also the contention of the Appellant/Wife through her evidence that the parents of the Appellant/Wife had registered the birth of her elder sisters and younger brother, as they were born in the hospital, whereas she was born at home, therefore, it was not registered, also was not accepted by the learned Judge, Family Court, Coimbatore. The Appellant/Wife had admitted that her elder sister's name is Suguna. Also, the learned Judge, Family Court, Coimbatore had observed that the Appellant/Wife had filed Ex.R-80, dated 07.02.1978. The Appellant/Wife had obtained Exs.P-8 and P-9 – Transfer Certificate and Ex.P-14 is the requisition by the Appellant/Wife seeking issuance of Community Certificate as she belongs to Viswakarma. The signature found on the application under Ex.P-14 is the same as found in Exs.P-8 and P-9 - Transfer Certificate of the Appellant/Wife obtained by her



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husband/Respondent. Also, the learned Judge had found Exs.P-8 and P-9 Transfer Certificate obtained for the Appellant/Wife wherein the signature of the Appellant/Wife-Sumathy is found. She had not denied the signature found on Exs.P-8 and Ex.P-9 and before 2006 she used to sign only in English, subsequently, she changed to Tamil. The contention of the Appellant/Wife that she had sought issuance of Birth Certificate with different address. She had claimed that in 1960 her parents resided in Door No.23/19, Muthannan Street and only in the year 1972 they shifted their residence to Door No.31/15 Venkattaramana Kovil Street. The Appellant/Wife was unable to prove that the documents obtained by the Respondent/Husband were not those of the Appellant/Wife but they belong to a different Sumathy, whose father's name is also Mani, who resided in Venkatramanaramana Street. The attempt of the Appellant/Wife to obtain Birth Certificate under Ex.R-64 dated 11.08.2006 with different address is found to be wanton suppression of the fact that they resided in Door No.23/19 Muthannan Street. Whereas the Appellant/Wife furnished the Birth Certificates of her elder sister – Suseela under Ex.R-77, dated 09.09.1957, her another sister – Savithiri under Ex.R-78, dated 16.10.1959



and her younger brother Ravishankar under Ex.R-79, dated 15.07.1968.

The contention of the Appellant/Wife that her date of birth alone was not registered with Municipal Authorities by her parents was found unacceptable by the learned trial Judge, Family Court, Coimbatore.

10.The trial Judge can always draw adverse inference on the conduct of the witness, litigants, party to the proceedings, if the litigant is unable to prove the contention in the pleading and on the facts and circumstances of the case before the learned trial Judge. Here the learned Judge, Family Court, Coimbatore had accordingly considered the conduct of the Appellant/Wife in not furnishing her birth certificate and also her contention that the certificate marked under Ex.R-12 by the Respondent/Husband is with regard to another Sumathy, D/o.Mani who resided in the very same street and who was her neighbor, was rejected by the learned trial Judge based on evidence. Further, the learned Judge in paragraph No.16 of the judgment had observed that the Appellant/Wife had claimed that she had studied only upto 5th Standard. In the course of the trial, the learned Judge



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observed that the Appellant/Wife had claimed that she had studied only upto 5th Standard. She had not furnished her education certificate as proof of her age or as proof of her educational qualification apprehending that she had to disclose her date of birth. She claimed that she had studied only upto 5th standard and also she claimed that she had been undertaking tuitions for the children in the neighbourhood. In the course of the trial, she did not engage counsel and she herself conducted the proceedings for her as Party-in-person. In the course of the trial, the learned Judge observed that she was fluent in English. Also in the Appellant's/Wife's document marked as Ex.P-1 before the Family Court, the qualification of Appellant/Wife was mentioned as B.A., B.Ed., in the course of the trial R.W-1 admitted that she used to take tuitions for the children in the neighbourhood. From the conduct of the Appellant/Wife before the trial Court, the learned Trial Judge observed that proficiency in English, she understands the Court proceedings, the words in English that she pronounced and the manner in which she conducted the Court proceedings for herself, the learned Judge was able to draw presumption that she has studied beyond 5th standard and



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she is proficient in English and she had suppressed the educational qualification by not producing documents regarding educational qualification. Apprehending that she will be forced to disclose her date of birth and to accept the contention of the Respondent/Husband that she forged the document viz., Transfer Certificate with the false date of birth which had created hardship for the Respondent/Husband before his superior officers by producing a forged document of educational qualification of his wife. Therefore, he had suffered mental cruelty due to the action of the wife in handing over a forged document to her husband. Also, the learned Judge had discussed about the cases foisted on the Respondent/Husband by the Appellant/Wife by approaching the Court of the learned Judicial Magistrate, Aluva, Kerala State, for domestic violence against the Husband/Appellant herein and her in-laws viz., her husband's sisters and mother simultaneously by filing another petition before the Court of the learned Judicial Magistrate in Coimbatore to threaten/coerce him not to proceed further with regard to the enquiry regarding her educational qualification. This has caused mental cruelty to the husband as claimed by him in the Petition seeking divorce in H.M.O.P.No.607 of 2006. The learned Judge had also discussed that even



though the Appellant/Husband had ten years of service left to retire from the Border Security Force on attaining the age of superannuation, he had decided not to extend his contract and sought retirement only because of the harassment caused by the conduct of the Appellant/Wife in furnishing a forged document with the Respondent/Husband which resulted in his superiors looking at him with contempt. Therefore, he had lost reputation before his superior officers which surely is a mental cruelty.

11.In the light of the above facts and on perusal of the documents Exs.P-1 to P-15 and R-1 to R-80, the learned Judge, Family Court, Coimbatore had assessed the evidence and arrived at a irresistible conclusion that the Appellant/Wife had meted out harassment/cruelty to the Respondent/Husband. In the course of the discussion, it is also stated that the Appellant/Wife was lavish in her spending without taking care of the future of the two daughters born to the Appellant and Respondent which also caused rift between them. She had attempted to prevent the marriage of the elder daughter seeking injunction in the Family Court in



H.M.O.P.No.526 of 2007 filed by her seeking restitution of conjugal rights.

The learned Judge, Family Court, had relied on the following rulings relied by the learned Counsel appearing for the Appellant/Husband as before the trial Court regarding the relationship going sour beyond limit:

1. In the case of *Naveen Kohli -vs- Neelu Kohli* reported in **2006 AIR 2016 SC 16750**.
2. In the case of *Satish Sitole -vs- Ganta* reported in **2006 AIR 2016 SC 16750**.
3. In the case of *Samar Ghosh -vs- Jaya Ghosh* reported in **(2007) 2 MLJ SC 1185**.
4. In the case of *S. Murugan -vs- Vaikunda Lakshmi* reported in **(1998) 2 MLJ 568**.
5. In the case of *S Jayakumar -vs- Vijayarani* reported in **MANU/TN/9636/2007**.
6. In the case of *S. Sridevi -vs- D.Rajasubramanian* reported in **(2008) 8 MLJ 29**.
7. In the case of *J. Balasubramanian -vs- S.Pitchaiammal* reported in **MANU/TN/8483/2007**.

Based on the above rulings, the learned Judge, Family Court, Coimbatore, observed that the relationship between the parties had damaged beyond repair. Therefore, the relationship cannot be maintained and had granted divorce to the Respondent/Husband. Also, the learned Judge, Family Court, Coimbatore had dismissed the petition seeking restitution of



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conjugal rights filed by the wife in H.M.O.P.No.526 of 2007.

12.It is the accepted principle that while disposing of civil appeal or a criminal appeal, the Appellate Court shall not disturb the finding of the trial Judge merely on the ground that there is a possibility to arrive at a just opposite conclusion on the same set of evidence. The Appellate Court shall not disturb the finding of the trial Court because the trial Judge has benefit of observing the demeanour of witness whereas the Appellate Court Judge does not have the advantage of observing demeanour of the witnesses. In the light of the appreciation of evidence, when the trial Judge had accepted the factual context available in the evidence, this Court as Appellate Court shall not disturb the finding. Therefore, the argument of the Appellant/Party-in-Person/Wife is rejected and the argument of the learned Counsel for the Respondent/Husband is accepted.

In the light of the above discussion, both the ***Civil Miscellaneous Appeals are dismissed*** as having no merits. The findings given by the



Civil Miscellaneous Appeal Nos.3161 & 3165 of 2014

learned Judge, Family Court, Coimbatore does not warrant any interference
and the same is confirmed. No costs.

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(R.S.M.J.) (S.S.K.J.)
01.03.2023

Index : Yes / No
Internet: Yes / No
Speaking order/Non Speaking order
Neutral Citation : Yes / No
dh/SRM



Civil Miscellaneous Appeal Nos.3161 & 3165 of 2014

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To

- 1.The Family Court,
Coimbatore
- 2.The Section Officer,
V.R.Section,
High Court of Madras.



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Civil Miscellaneous Appeal Nos.3161 & 3165 of 2014

R.SUBRAMANIAN.J

AND

SATHI KUMAR SUKUMARA KURUP. J.

dh/SRM

Judgment made in
C.M.A.Nos.3161 & 3165 of 2014

01.03.2023