



C.M.S.A(MD)No.17 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.S.A(MD)No.17 of 2022

O.Kannan

... Appellant

.VS.

M.Deepa

... Respondent

PRAYER: Civil Miscellaneous Second Appeal is filed under Section 28 of Hindu Marriage Act r/w. Section 100 of C.P.C., to set aside order and decree in H.M.C.M.A No.18 of 2018 dated 19.08.2021 on the file of the learned I Additional District Judge, Madurai and H.M.O.P.No.47 of 2013 on the file of the learned III Additional Subordinate Judge, Usilampatti Camp order and decree dated 24.08.2017 and allow this Civil Miscellaneous Second Appeal with necessary directions in favour of the appellant.

For Appellant : Mr.R.Ravindran

For Respondent : Mr.T.K.Gopalan



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JUDGMENT

WEB COPY This civil miscellaneous second appeal is filed challenging concurrent Judgments in H.M.C.M.A.No.18 of 2018 on the file of the learned I Additional District Judge, Madurai and in H.M.O.P.No.47 of 2013 on the file of the learned III Additional Subordinate Judge, Usilampatti.

2. The appellant filed a divorce petition under Section 13(1)(ia) of Hindu Marriage Act. The allegations made in the petition in brief are that the marriage between the appellant and the respondent had taken place on 07.11.2011 in the house of the appellant. At the time of marriage, the respondent was provided with 25 sovereigns of gold jewels and another 15 sovereigns of gold jewels along with household articles. After marriage, they started residing at Kovilampakkam. The appellant was working as Supervisor in TASMAL. At the time of marriage, it was informed that the respondent's family had a debt of Rs.2,00,000/-. He pledged 15 sovereigns of gold jewels and settled that loan. Due to marital relationship, the respondent got conceived. The respondent's parents brought lot of drumstick. When asked about this, the respondent informed that since the appellant had not indulged in physical



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relationship with her, drumstick were bought. The respondent used to consume lot of mangos and groundnuts, when she was in a family way.

It led to abortion of fetus. The respondent used to inform her father about the intimate relationship between them. She even informed her father that the appellant had not shared bed with her on a particular day. If he returned late, she would question him with whom he was sleeping with and come late. The respondent informed him that her aunt wanted her son to marry her. But, he was already married. Because of this incident, the appellant was put to unbearable mental and physical harassment. On 11.10.2012, the respondent left the family along with her 25 sovereigns of gold jewels and appellant's 10 sovereign of gold jewels. When he visited her, she gave him back only six sovereign of gold jewels and refused to live with him stating that he is not a man. She also threatened him to give police complaint. In the said circumstances, this petition was filed for divorce.

3. This petition was resisted by the respondent in the counter stating that the appellant had already married one Thenmozhi and lived with her for five years and then divorced her. When the marriage proposal was made, the appellant parents demanded Rs.2,50,000/- and



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30 sovereigns of gold jewels for the respondent and one sovereign of ring for the appellant. Accordingly, the respondent's parents provided and the marriage had taken place. After she got conceived, she had taken treatment at Xcellent Care Hospital. She was advised to rest for a month at her parents house. Appellant informed that he required a sum of Rs.4,00,000/- for purchasing a plot. The respondent's parents informed him that they are short of money and not able to pay the money. Only thereafter, the appellant started to neglect the respondent. The appellant threatened that unless a sum of Rs.4 lakhs was paid, he would not live with her. Appellant had deliberately avoided to live with the respondent without any valid reason and harassed the respondent. The respondent is ready to live with the appellant. Therefore, she prayed for dismissal of the divorce petition.

4. During the enquiry before the Trial Judge, on the side of the appellant, PW1 was examined and Ex.P1 to Ex.P3 were marked and on the side of the respondent, RW1 to RW3 were examined and no document was produced.

5. On the basis of oral and documentary evidence, the learned Trial



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Judge found that the ground alleged in the divorce petition is not established and thus, dismissed the petition. Against which, the appellant filed an appeal in H.M.C.M.A.No.18 of 2018 on the file of the learned I Additional District Judge, Madurai. The learned I Additional District Judge, Madurai, had confirmed the order of the learned Trial Judge and dismissed the appeal. Thus, this Civil Miscellaneous Second Appeal.

6. It is the submission of the learned counsel for the appellant that the respondent has not taken any initiative for living with her husband. She got married on 07.11.2011 and she lived with the appellant only for four months. Thereafter, she left the company of the appellant and is living with her parents. Due to the long separation, the marriage had irrecoverably broken down and there is no possibility of them living together. In the said circumstances, he prays for setting aside concurrent Judgments of the Courts below and allowing this appeal.

7. In response, the learned counsel for the respondent submitted that the respondent is always ready and willing to live with the appellant. Appellant was alone responsible for the separate living. The Courts below have concurrently, on the basis of oral and documentary evidence,



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found no merit in the allegation of cruelty and dismissed the divorce petition. Thus, he prays for confirming the Judgments of the Courts below and for dismissal of this appeal.

8. Considered the rival submissions and perused the records.

9. From the consideration of pleadings, oral and documentary evidence and the submission of the learned counsel appearing for the parties, it is evident that after marriage, the respondent lived with her husband for some time and then she got separated to live with her parents. The grounds for cruelty as per the petition averments are as follows:

(i) The respondent parents bought lot of drumstick and when asked about this, respondent informed the appellant that he avoided physical relationship with her and therefore, the drumstick were bought.

(ii) After getting conceived, the respondent had consumed a lot of mangos and groundnuts resulting in abortion of fetus.

(iii) The respondent was suffering from thyroid.

(iv)The respondent used to share the intimated relationship between the appellant and her, with her father on daily basis. She would



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even inform that the appellant had not come to bed with her.

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(v) If he returns home late, she would ask him with whom he was sleeping with?

Mainly on these grounds, stating that these grounds constitute mental cruelty, the appellant filed this petition.

10. This Court finds from Paragraph-4 of the divorce petition that at the time of marriage, the appellant provided the respondent with 25 sovereign of gold jewels and another 15 sovereign of gold jewels along with house hold articles. This is too tall a claim and there is no evidence in support of this claim. Usual practice is, only the bride family, would provide gold jewels and household articles. The appellant has not produced any material evidence in support of his claim. The claim of the appellant that the respondent used to inform her father through phone on daily basis about their physical relationship, is unbelievable. So also the claim that she informed her father that her husband did not come to bed with her. The physical condition of the respondent suffering from Thyroid is not a ground for divorce and it is not a ground to claim cruelty. Other allegation that she used to consume lot of mangos and peanuts, also cannot be considered as cruelty entitling



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the grant of divorce on the ground of cruelty. When it is said in paragraph-8 that the respondent told him that he is not even a man, the claim made in paragraph-7 that the respondent asked him when he comes late as to with whom he was bedding with, is mutually contrary to the statements. Thus, this Court finds that the grounds of cruelty for maintaining the petition under Section 13(1)(ia) of the Hindu Marriage Act are imaginary, exaggerated and not supported by any evidence. The learned Trial Judge, on going through the evidence and on proper appreciation of evidence, rightly found that the appellant had not made out the ground for cruelty entitling him for divorce. That finding was confirmed by the first appellate Court as well. This Court finds no reason to take a different view of the matter and there is no substantial question of law arises for consideration in this appeal.

11. In fine, this Civil Miscellaneous Second Appeal is dismissed by confirming the Judgments of the Courts below. No costs.

Index :Yes/No
Internet :Yes/No
NCC :Yes/No
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- To
- 1.The I Additional District Judge,
Madurai.
 - 2.The III Additional Subordinate Judge,
Usilampatti.



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G.CHANDRASEKHARAN,J.

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