



C.M.A(MD)No.532 of 2017.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 12.04.2023
DELIVERED ON : 01.06.2023

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.532 of 2017

R.Malkiya Rasalin Prince

... Appellant/Petitioner

Vs.

Herlin Jiji

... Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 55 of the Indian Divorce Act, to call for the records relating to the fair order and decreetal order, dated 12.08.2016 made in D.O.P.No.292 of 2011 on the file of the District Judge, Kanyakumari Division, Nagercoil and set aside the same and allow the civil miscellaneous appeal.

For Appellant : Mr.T.Antony Arulraj

For Respondent : Mr.V.Meenakshi Sundharam

JUDGEMENT

The above appeal has been filed by the husband challenging the dismissal of his petition for divorce by the District Court, Kanyakumari at Nagercoil in D.O.P.No.292 of 2011.



C.M.A(MD)No.532 of 2017.

WEB COPY

2. The appellant had got married to the respondent as per the Christian ceremonies on 18.05.2009. A female child was born to them on 23.11.2010. The husband had originally filed I.D.O.P.No.326 of 2010 before the same Court for the relief of restitution of conjugal rights. The said petition was not pressed by the husband on 24.02.2011. Thereafter, the present divorce petition has been filed by the husband on 27.06.2011. After hearing both the parties, the learned trial Judge was pleased to dismiss the divorce petition on the ground that the husband has not made out the grounds for divorce. Challenging the same, the appeal has been filed by the husband.

3. The husband in his divorce petition has contended that right from the beginning, the wife was not affectionate towards him and she had not given the entire salary to him. He had further contended that the wife without informing the petitioner, had regularly used to go her parental house and this has caused great mental agony to the husband. The husband has further contended that on 27.12.2009, the wife's parents and well wishers came to the petitioner's house and warned the wife about her character. The husband has sent a legal notice on 23.04.2010 calling upon the wife to return back to the matrimonial home with all the



C.M.A(MD)No.532 of 2017.

jewels and other apparels. However, there was no reply from the wife.

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4. The husband has further contended that a female child was born on 23.11.2010 and when the petitioner and his parents visited the house of the respondent, they were not treated properly. Even during the pendency of I.D.O.P.No.326 of 2010, relatives of the wife approached the petitioner and requested for a reunion. Therefore, the husband had not pressed the restitution petition.

5. The husband has further contended that the wife had handed over all her jewels to her mother and in view of the said fact, she had not attended any one of the family functions. He further contended that on 15.05.2011, when the petitioner and the well wishers visited the respondent's house and requested her to come back to the matrimonial home, they were abused by the petitioner. In fact, he was chased away by the cousin of the respondent. Therefore, the petition for divorce has been filed on the ground of mental cruelty.

6. On the other hand, the wife has contended that she had handed over all her jewels to her husband and he had alone mortgaged the jewels. She had further contended that she had given a major portion of



C.M.A(MD)No.532 of 2017.

her salary to her husband. She had further complained that the husband was not having any love and affection towards her. But he was interested only with the salary of the respondent. Since the jewels were in the custody of the husband, the allegation that the wife did not attend the functions on the husband side are factually incorrect.

7. The wife has further contended that the husband was working as lecturer at Sivakasi and he used to visit the matrimonial home only during weekends. Therefore, he himself had requested the wife to stay in her parental home so that she can easily attend to her college work.

8. The wife has further contended that the husband himself had left her in her parent's house on 05.04.2010 for delivery and immediately, he had filed I.D.O.P.No.326 of 2010 for restitution of conjugal rights. When he felt that he may not succeed in the said petition, he and his relatives compelled her to sign the petition for mutual consent. She further contended that the husband has never redeemed the jewels and he has never handed over the jewels to her.

9. The wife has further contended that the husband's brother is involved in a murder case and he has been arrested. After coming out on



C.M.A(MD)No.532 of 2017.

bail, he is residing with the petitioner and therefore, she apprehends danger to her life. She had further contended that she is always ready and willing to cohabit with the husband if he agrees to reside at a new place and if he undertakes that he will not give any physical or mental torture to the respondent.

10. After considering the oral and documentary evidence, the trial Court arrived at a finding that the ingredients of mental cruelty have not been made out. The trial Court further found that the husband had left the wife in her parental home for delivery and thereafter, filed restitution of conjugal rights petition. After not pressing the said petition, had filed the present divorce petition on the ground of mental cruelty. Therefore, there is no desertion on the part of the wife warranting granting of divorce. Based upon the said findings, the trial Court had dismissed the divorce petition. Challenging the said order, the present appeal has been filed by the husband.

11. The learned counsel appearing for the appellant/husband had contended that the wife had deserted the husband on 05.06.2011 itself without even informing the husband. He further contended that the trial Court had erroneously arrived at a finding that the husband was



C.M.A(MD)No.532 of 2017.

maintaining a relationship with the wife even when the matrimonial dispute was pending. He further contended that the wife did not have any intention to live with the husband and she was frequently deserting the husband for frivolous reasons. The wife never had any cordial relationship with the husband or with her in-laws. She had not given any proper reason for staying away from the matrimonial home except for frivolous reason that the bus stop is far away from the matrimonial home.

12. The learned counsel appearing for the appellant had further contended that the trial Judge has not properly appreciated the fact that only on the promise made on the side of the wife's relatives that the wife would mend her behaviour after the birth of the child, the petition was withdrawn and not with an intention to file a divorce petition. He had further pointed out that the involvement of the husband's brother in a criminal case is no way connected with the matrimonial life between the parties. The said criminal proceedings are being projected only to defame the status of the family of the husband in the society.

13. The learned counsel for the appellant had further contended that the wife though had stated in the counter that she is ready to live with the husband, she has strongly opposed the petition for restitution of



C.M.A(MD)No.532 of 2017.

conjugal rights filed by the husband. Therefore, it is clear that the wife has no intention whatsoever to live with the husband. In such circumstances, this Court should intervene in the matter and grant a divorce decree.

14. Per contra, the learned counsel appearing for the wife had contended that the petition for dissolution of marriage has been filed on the ground that the wife has treated the husband with cruelty. However, none of the ingredients of the said ground have been made out. All the allegations made by the husband in the divorce petition would clearly disclose that the husband is more concerned with the jewels and the salary of the wife. When the husband is not residing in the matrimonial home and he is residing at Sivakasi for attending to his work as a college professor, there is nothing wrong on the part of the wife to reside in his parental home for safety and security purposes. Whenever the husband returned to matrimonial home on the weekends, the wife had always joined the husband in the matrimonial home. Therefore, the wife residing in her parental house, during the absence of the husband in the matrimonial home, cannot be considered to be a mental cruelty or desertion. Hence, he prayed for dismissal of the appeal.



C.M.A(MD)No.532 of 2017.

15. I have carefully considered the submissions made on either side and perused the records.

16. A perusal of the divorce petition discloses that the said petition has been filed under Section 10 (1) (x) of Divorce Act, 1869 seeking divorce on the ground that the wife has treated the husband with such cruelty so as to cause a reasonable apprehension in the mind of the petitioner that it would be harmful or injurious for the petitioner to live with the respondent.

17. The allegation on the part of the appellant/husband can be summarized as follows:

(i) The wife was not affectionate and she purposely has not given the salary to the husband and she used to hand it over to the same to her mother.

(ii) Without properly informing the husband, she used to visit her parent's house and she had not being a dutiful wife.



C.M.A(MD)No.532 of 2017.

(iii) On 05.04.2010, she left the matrimonial home without informing the petitioner. Though she was called back to the matrimonial home through mediators, she made lame excuses. Therefore, a legal notice was sent on 23.04.2010 calling upon the wife to return back to the matrimonial home with all the jewels and apparels. The said notice was not answered.

(iv) The husband had filed I.D.O.P.No.326 of 2010 for restitution of conjugal rights and the same was not pressed on the undertaking given by the wife's relatives on 24.02.2011.

(v) When the husband and his relatives visited the wife's house to meet the new born child, they were not treated properly.

(vi) The wife citing the absence of jewels, had refused to attend various functions arranged by the husband family.

18. The wife had categorically denied these allegations contending that the jewels were handed over to the husband and he had pledged them and so far not redeemed them. During cross-examination, the husband has admitted that on 23.06.2009, he had mortgaged the jewels.



C.M.A(MD)No.532 of 2017.

WEB COPY

19. The husband has further contended that on 25.04.2011, he had redeemed the jewels and handed over the same to his wife. However, no documents have been filed before this Court proving redemption of the said jewels. Therefore, it is clear that the allegation of the wife that the wife had handed over the jewels to her mother and she is refusing to get back the jewels is factually incorrect.

20. The husband has further contended that the wife used to visit her parental home without properly informing the husband or his family members. The wife has pointed out that the husband is not permanently residing in his matrimonial home and he is working at Sivakasi. Therefore, the husband used to return to the matrimonial home only during weekends. According to the wife, she had returned to the matrimonial home during weekends to join with her husband. Therefore, it is clear that the contention of the husband that she used to leave the matrimonial home and reside at her parental home is also not factually correct. When the husband was not available in the matrimonial home, naturally the wife would like to be in her parental home, especially when she is an employed woman.



C.M.A(MD)No.532 of 2017.

WEB COPY

21. The husband has further contended that the wife has deserted him from 05.04.2010 onwards. It is an admitted fact that she has given birth to a female child on 23.11.2010. Therefore, it is clear that the husband has left the wife in her parental home while she was on her family way. While the wife was pregnant and residing in her parental home, the husband has issued a legal notice on 23.04.2010 seeking not only the restitution of conjugal rights, but the husband has called upon the wife to return back with all the jewels and other apparels. Since there was no response for the said notice, the husband had filed I.D.O.P.No. 326 of 2010 for restitution of conjugal rights. A female child was born to the couple on 23.11.2010. Four months thereafter, the husband has chosen to withdraw the said I.D.O.P.No.326 of 2010 on 24.02.2011. Therefore, it is clear that the husband had issued a legal notice and prosecuted the restitution of conjugal rights petition while the wife was in her parental home for delivery.

22. After withdrawing I.D.O.P.No.326 of 2010 on 24.02.2011, the husband has filed the present D.O.P.No.292 of 2011 on 27.06.2011 alleging mental cruelty on the part of the wife. A perusal of Section 10 (1) (x) of Divorce Act, 1869 will clearly disclose that the cruelty should



C.M.A(MD)No.532 of 2017.

be to such an extent that it should create reasonable apprehension in the mind of the aggrieved spouse that it would be harmful or injurious to him to live with the respondent. In the present case, the husband is not able to project any fact or incident or allegation whatsoever that there was any cruelty on the part of the wife which would amount to raise some apprehension in the mind of the husband that it would be harmful or injurious to him to live with his wife. On the other hand, the husband has expressed in so many words in the legal notice under Exhibit P.2, dated 23.04.2010 and in the divorce petition that he is more interested in the jewels and salary of his wife.

23. The trial Court after appreciating the oral and documentary evidence, has rightly arrived at a finding that the husband has not proved any one of the ingredients of mental cruelty as contemplated under the Act. The appellant and his wife both are well educated and they are having a girl child. There are no serious allegations as against each other. In such circumstances, this Court does not find any ground to interfere in the order of the trial Court. There are no merits in the appeal.



C.M.A(MD)No.532 of 2017.

WEB COPY

24. Hence, this Civil Miscellaneous Appeal stands dismissed. No

costs.

01.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

- 1.The District Judge,
Nagercoil,
Kanyakumari.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A(MD)No.532 of 2017.

R.VIJAYAKUMAR ,J.

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Pre-delivery order made in
C.M.A(MD)No.532 of 2017

01.06.2023