



C.M.S.A.(MD)Nos. 44 and 45 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON :06.12.2023

PRONOUNCED ON : 25.03.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.S.A.(MD)Nos. 44 and 45 of 2019

Vijayalakshmi

... Appellant / Appellant / Respondent

Vs.

S.Jayapaul

... Respondent / Respondent/ Petitioner

PRAYER in C.M.S.A.(MD)No.44 of 2019: Civil Miscellaneous Second Appeal filed under Section 28 of Hindu Marriage Act, 1955 read with U/S 100 of CPC, against the judgment and decree passed in C.M.A.No.12 of 2016 on the file of the V Additional District Judge, Madurai, dated 31.08.2017 confirming the judgment and decree passed in H.M.O.P.No.151 of 2013 on the file of the 1st Additional Sub-Judge, Madurai (Melur Camp), dated 29.04.2016.

PRAYER in C.M.S.A.(MD)No.45 of 2019: Civil Miscellaneous Second Appeal filed under Section 28 of Hindu Marriage Act, 1955 read with U/S 100 of CPC, against the judgment and decree passed in C.M.A.No.13 of



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2016 on the file of the V Additional District Judge, Madurai, dated 31.08.2017 confirming the judgment and decree passed in H.M.O.P.No.211 of 2013 on the file of the 1st Additional Sub-Judge, Madurai (Melur Camp), dated 29.04.2016.

For Appellant : Mr. V.Meenakshi Sundaram

For J.Balameenakshi

For Respondent : Mr. PT.S.Narendravasan

JUDGMENT

These Civil Miscellaneous Second Appeal have been preferred against the Judgment and decree dated 31.08.2017 made in C.M.A.Nos.12 and 13 of 2016 on the file of the V Additional District Judge, Madurai, confirming the judgment and decree dated 29.04.2016 passed in H.M.O.P.Nos.151 and 211 of 2013 on the file of the 1st Additional Sub-Judge, Madurai (Melur Camp).

2. For the sake of convenience, the parties are referred herein as per their rank before the Trial Court.



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3. H.M.O.P.No.211 of 2013 has been filed by the husband under Section 13 (1) (ia) and (1) (ib) of Hindu Marriage Act, 1955, seeking to dissolve the marriage between the petitioner / husband and the respondent / wife by decree of divorce. H.M.O.P.NO.151 of 2013 has been filed by the wife seeking restitution of conjugal rights.

4. The case of the petitioner in H.M.O.P.No.151 of 2013:

(i) Marriage between the appellant and the respondent was solemnised as per Hindu rites and customs on 06.12.2009 at Moovendar Panpattukalaga Thirumana Mandapam, Melur Town. Following their marriage, the appellant lived with the respondent only for 3 months. After which the respondent lived abroad. Petitioner's parents presented her with approximately 70 sovereigns of jewels as a wedding gift. However, the respondent pledged her jewels to meet the respondent's family's financial requirements and never returned them. After marriage, she was living with her husband and in-laws in a joint family set-up, during that time, she endured both physical and mental cruelty at the hands of her husband and in-laws. They were blessed with two children namely Roshini and Akilan.



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(ii) The respondent had borrowed the petitioner's jewels for his sister Megala's wedding. When the petitioner requested the return of her jewels from the respondent and her in-laws, they responded with verbal abuse. Later, the situation escalated, with threats directed at the petitioner's father, warning that she would be killed if she continued residing in the respondent's home. In an attempt to resolve the conflict, the petitioner's father sought mediation from elders within the society. Subsequently, the petitioner found herself under house arrest imposed by the respondent and in-laws. When the petitioner's father questioned the illtreatment, the respondent and his family expelled the petitioner and her children from their home. Despite these challenges, prioritizing the well-being of the children, the petitioner expressed her desire to reconcile and live with the respondent.

(iii) After filing a case at the All-Women's Police Station, Melur, the police conducted an investigation and interrogated the respondent and his family, as a result of which, they returned a part of the jewels but failed to return the remaining jewels which were around 11 ½ sovereigns within the stipulated time frame. Upon the petitioner's request for the outstanding



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balance jewelry, the respondent, instead of complying, sent a legal notice through his lawyer, seeking a divorce from the petitioner.

(iv) The petitioner holds a Master's degree (M.Sc., B.Ed.). The respondent falsely claimed that the petitioner was mentally affected and sent a notice dated 16.02.2013 containing false allegations through his lawyer, to which, she sent a reply notice dated 22.02.2013 through her lawyer. Notably, just a few days before sending the aforementioned, the respondent had promised to establish a nuclear family setup for the petitioner and their children. Regrettably, he deviated from this promise, succumbing to ill advice from his parents and sent the notice dated 16.02.2013.

(v) The petitioner and the respondent could not live together because of the ill advice of the respondent's parents. Despite the many mistakes committed by the respondent, the petitioner consistently tolerated those actions for the well-being of their children and she continues to make efforts towards reconciliation and living together. Hence, she filed this petition for restitution of conjugal rights.

5. The case of the respondent (husband) in H.M.O.P.No.151 of 2013:



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(i) The respondent had filed a counter refuting each and every allegations put forth by the petitioner in her petition. Admitting that the marriage between the petitioner and the respondent was held on 06.12.2009 at Moovendar Panpattukalaga Thirumana Mandapam, Melur Town as per Hindu Rites and Customs. He admitted that at the time of marriage, the petitioner was provided with 70 sovereigns of golden jewels by her parents and 10 sovereigns of golden jewels by the respondent. Contra to the allegations that the jewels were pledged by the respondent for his family necessity and that he delayed without returning the same to the petitioner are denied as false and were not admitted. The further allegations that the respondent, his parents and sisters jointly caused injuries to the petitioner mentally physically and committed cruelty to the petitioner are meaningless and fraudulent and the same are only invented for this petition. It is admitted that during the lawful wedlock of the petitioner and the respondent two children were born.

(ii) The allegations that the respondent had returned the pledged ornaments to the petitioner due to the complaint before the All Women Police Station and failed to return 11 ½ sovereigns of jewels are incorrect false and are not admitted. He further submitted that the petitioner inflicted



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cruelty on the respondent. Hence, he prayed for dismissal of this petition and filed divorce petition.

6. The case of the petitioner (husband) in H.M.O.P.No.211 of 2013:

(i) It is submitted that, from the date of solemnization of marriage, till the separation of the respondent during the month of November 2012, the respondent had behaved indifferently and she was arrogant, non-cooperative and achieved her objects by carrying out threats. The respondent always misbehaved, disobeyed and ill treated the petitioner and his parents at the ill advise of her parents. Further the respondent brought up was with bad life style and she always irritated the petitioner with unethical talks and filthy language. Her misbehaviours created frequent mental torture to the petitioner. It is submitted that the petitioner is an Engineering graduate and he served at different countries and due to the mental agony and torture caused by the respondent, he is unable to perform his job and returned to his native. Due to the acts, words and misbehaviours, the petitioner was thoroughly terrorized and he lost his balance of mind.



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(ii) He further submitted that the mental torture and agony sustained by the petitioner from the beginning cannot be expressed in words. The petitioner is undergoing with this mental trauma for no fault of his and he is unable to condone the cruelty committed by her. The cruelty caused by the respondent to the petitioner is not only mental cruelty; but also legal cruelty. It is significant to point out that the respondent's acts, words and misbehaviours reveal that she has been suffering continuously or intermittently from mental disorder, which amounts to incurable unsound mind and when the respondent is of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent. It is more significant to mention that, the respondent had lodged a false police complaint against the petitioner and the police authorities had also found it as false and advised the respondent not to indulge with unnecessary acts and inspite of it the respondent had not mend her ways and means.

(iii) The entire acts and words of the respondent has caused cruelty to the petitioner. The respondent had never respected the petitioner and his family members who are very soft natured people. The petitioner submits



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that, a registered lawyer notice was issued to the respondent on 16.02.2013 by calling for divorce by mutual consent and for which the respondent had replied on 22.02.2013 as if the petitioner had committed cruelty. All the contentions stated in the reply notice dated 22.02.2013 are denied as false and are not admitted. The petitioner submits that the petitioner and the respondent had been separated during the month of November 2012. There is no chance of reunion, besides the petitioner has not condoned the acts of cruelty of the respondent. Hence, he filed this petition seeking divorce.

7. The case of the respondent (wife) in H.M.O.P.No.211 of 2013:

The respondent submitted that she already filed petition for restitution of conjugal rights. However, after that her husband filed this divorce petition. During the pendency of above cases, the respondent husband illegally married one Kokila. On considering the facts the respondent filed complaint before the police and the police registered Cr.No.7/2014 and arrested the husband, produced before the Court and remanded him to judicial custody. Thereafter he was released on bail. She denied all the allegations putforth by her husband. Hence, she prayed for dismissal of this petition.



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8. The learned Trial Court proceeded to conduct Joint Trial and the learned Trial Court had framed two issues in H.M.O.P.No.151 of 2013 and three issues in H.M.O.P.No.211 of 2013. Following which, two witnesses were examined as P.W-1 and P.W-2 and Ex.P-1 to Ex.P-7 were marked on the side of the wife. The husband was examined as R.W-1 and Ex.R-1 to Ex.R-6 were marked on the side of the husband.

9. The respondent / husband was examined as RW1. He has deposed that 14 days after the marriage, he went abroad for joining his work. After 10 months he returned to his native. At that time his wife was not in his home. She was along with her parents. P.W.1/ petitioner has admitted that four times the respondent has taken visa for the petitioner to take along with him. But she did not accompany with the respondent / husband. Ex.R.1 is the receipt showing that respondent has returned 41 ½ sovereigns of gold ornaments belonged to the petitioner in the police station on the basis of her complaint before the Superintendent of Police. Ex.R.2 shows that on February, 2014 the petitioner filed M.C.6/2014 before the Judicial Magistrate Court, Melur for maintenance for herself and her children. She admits that as per the interim order in Maintenance case



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6/2014, the respondent is paying Rs.15,000/- to the petitioner from July 2016. Ex.R-3 is the petition in D.V.No.11/2014 filed by the petitioner before the Judicial Magistrate Court, Melur under the Protection of Women from Domestic Violence Act.

10. Ex.R.4 is the FIR in Cr.No.7/2014 of Melur Police Station registered against the respondent husband and his family members for an offence punishable under Sec.294(b), 498 A, 494, 506(ii) r/w Section 4 of TNWPH Act, on the basis of the complaint preferred by the wife.

11. On the basis of the oral and documentary evidence and the arguments submitted by the respective parties, the learned Trial Court proceeded to conclude that it has come out in evidence that in connection with the crime the respondent husband was arrested, produced before the Court and remanded to judicial custody. After seven days he was released on bail. The learned Trial Court further observed that in the First Information Report there is a specific allegation that while the marriage between the petitioner / husband and respondent / wife was in existence,



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the petitioner / husband illegally conducted a marriage with one Kokila.

Ex.R.5 is the Memo issued by the Inspector of All Women Police Station, Melur Station that the Final report has been filed and the husband should intimate the police before leaving abroad. He should also appear before the Court for hearing without fail. Ex.R.6 is the copy of plaint in O.S.249/2015 of District Munsif Court, Melur filed by the petitioner seeking guardianship to her minor children as against the husband and 7 others.

12. When the petitioner was examined as PW.1, she admitted that the passport of the respondent was seized by the police thereby he remained jobless for 2 ½ years. Ex.R.5 is the memo, dated 27.04.2015 issued in Cr.No. 7/2014 by the Inspector of Police, All Women Police, Melur stating that he shall not leave the country without intimation to the police. The learned Sub Judge after considering the entire evidence arrived at a finding that due to the multiplicity of cases filed by the petitioner, there is no chance of reunion and also particularly in a case where the husband had already married one Kokila, as revealed from evidence.



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13. The learned Trial Court further observed that the principle that cruelty may be inferred from the whole facts and matrimonial relations of the parties and interaction in their daily life disclosed by the evidence, is of greater cogency in cases falling under the head of mental cruelty. Thus, mental cruelty has to be established under the facts. In case of physical cruelty, there may exist tangible evidence, clearly indicating cruel behaviour, as against cases of mental cruelty, where there may not be any direct evidence. The learned Trial Court further proceeded to conclude that the court is required to delve into the mental process and the effect of such incidents and instances that may be brought out in evidence. Accordingly, the learned Trial Court allowed the divorce petition in H.M.O.P.No.211 of 2013 and consequently, dismissed the petition in restitution of conjugal rights in H.M.O.P.No.151 of 2013. Assailing the same, C.M.A.(MD)Nos. 12 and 13 of 2016 were filed by the wife before the V Additional District Judge, Madurai.

14. The learned First Appellate Court observed that it is come out in evidence that the appellant is, living separately from the respondent for about five years. The respondent has not given any reasonable explanation



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as to why she is living separately. The learned First Appellate Court further observed that she filed criminal complaints against the husband based on which he was arrested and kept in jail. Further evidence reveals that the husband has married one Kokila during the subsistence of the first marriage. Kokila and the respondent are now facing criminal proceedings. After elaborately considering the facts and circumstances relevant to this case, the learned First Appellate Court proceeded to conclude that the decision of the trial Court need to be confirmed. Assailing the same, the present C.M.S.A.(MD)Nos.44 and 45 of 2019 have been filed by the wife.

15. Heard the learned Counsel appearing for the husband and the learned Counsel appearing for the wife. Carefully perused the materials available on record.

16. The substantial question of law framed these C.M.S.A. are as follows:

“(i) Whether the courts below are right in granting divorce on the ground of Irretrievable break down of marriage which is not provided in the statute?”

(ii) Whether the courts below have considered the age



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of the appellant and respondent and how long they are living separately at the time of granting divorce?

(iii) Whether the courts below were right in granting divorce and dismissing the restitution of conjugal rights even though the respondent has committed the offence of bigamy when the marriage between appellant and respondent are subsisting legally?

17. The Hon'ble Apex Court in the case of ***Vishwanath Agrawal .Vs. Sarla Vishwanath Agrawal reported in (2012) 7 SCC 288*** has dealt with the case of concurrent findings by the Trial Court and the First Appellate court and has held that the High Court in a second appeal should not disturb the concurrent findings of fact unless it is shown that the findings recorded by the Courts below are perverse being based on no evidence or that on the evidence on record no reasonable person could have come to that conclusion. The relevant portion of the same is extracted as follows:

“36. In Major Singh v. Rattan Singh it has been observed that when the courts below had rejected and disbelieved the evidence on unacceptable grounds, it is the duty of the High Court to consider whether the reasons given by the courts below are sustainable in law while hearing an appeal under Section



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100 of the Code of Civil Procedure.

37. In Vidhyadhar v. Manikrao it has been ruled that the High Court in a second appeal should not disturb the concurrent findings of fact unless it is shown that the findings recorded by the courts below are perverse being based on no evidence or that on the evidence on record no reasonable person could have come to that conclusion. We may note here that solely because another view is possible on the basis of the evidence, the High Court would not be entitled to exercise the jurisdiction under Section 100 of the Code of Civil Procedure. This view of ours has been fortified by the decision of this Court in Abdul Raheem v. Karnataka Electricity Board.”

18. Fully fortified by the judgment by Hon'ble Apex Court and fully satisfied by the concurrent findings of the learned 1st Additional Sub Court and the learned V Additional District Judge and holding that the decisions of both the lower Courts are fully supported by the evidence, I am not inclined to interfere with the Judgment and decree passed by the First Appellate Court and the Trial Court in C.M.A.Nos.12 and 13 of 2016 and H.M.O.P.Nos. 151 and 211 of 2013 respectively.



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19. Accordingly, these Civil Miscellaneous Second Appeals are dismissed. There shall be no order as to costs.

25.03.2024

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

- 1.Principal District Judge,
Karur.
- 2.The Principal Subordinate Judge,
Kulithalai.

Copy to

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.,

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