

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2015

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

C.M.A.NO.1974 OF 2015 AND
M.P.NO.1 OF 2015

L.Stella ...Appellant/Respondent
Vs.

V.Ponnusamy ...Respondent/Petitioner

Prayer: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984 to set aside the Judgment and Decree dated 06.02.2015 in D.O.P.No.122 of 2008 on the file of the Additional Principal Judge, Additional Family Court, Coimbatore

For Appellant : Mr.K.S.Karthik Raja

For Respondent : Mr.K.Premkumar

J U D G M E N T

[Judgment of the Court was delivered by
M.VENUGOPAL, J.]

The Appellant/Respondent has preferred the present Civil Miscellaneous Appeal as against the Order dated 06.02.2015 in DOP.No.122 of 2008 passed by the learned Additional Principal Judge, Additional Family Court, Coimbatore.

2.The Learned Additional Principal Judge, Additional Family Court, Coimbatore while passing the Impugned Order in D.O.P. No.122 of 2008 (filed by the Petitioner/Husband) on 06.02.2015 at Paragraph No.12 had interalia observed that the "failure of the respondent (Appellant) to perform the duty of a wife, is proved to have caused cruelty which is harmful to the Petitioner (Respondent/Husband). Thus, the above said fact fits into the ground for dissolution of marriage adumbrated under Section 10 (1)(x) of the Divorce Act, 1869" and resultantly allowed the Petition by dissolving the marriage solemnized between the parties that took place on 18.03.1991 and accordingly granted a decree for divorce.

3.Assailing the correctness of the Order dated 06.02.2015 in D.O.P.No.122 of 2008 passed by the learned Additional Principal Judge, Additional Family Court, Coimbatore, the Appellant/Respondent (wife) has focused the present Civil Miscellaneous Appeal before this court as an aggrieved person.

4.The Learned Counsel for the Appellant/Respondent (wife) contends that the order of the learned Additional Principal Judge, Additional Family Court, Coimbatore in D.O.P. No.122 of 2008 dated 06.02.2015 is against facts and evidence.

5.According to the Learned Counsel for the Appellant, the Learned Additional Principal Judge, Additional Family Court, Coimbatore had committed an error in allowing the Petition namely, D.O.P.No.122 of 2008 for divorce filed by the Respondent/Husband under Section 10(1)(ix) & 10(1)(x) of the Divorce Act, 1869, when the marriage between the Appellant and the Respondent was solemnized under The Special Marriage Act, 1954.

6.The Learned Counsel for the Appellant proceeds to take a plea that the Learned Trial Judge had failed to appreciate that once the parties to the marriage performed the marriage and submit to the provisions of the Special Marriage Act, 1954, their marital relationship and their marital rights are governed by the said Act and as such, the parties are bound to seek redressal only under the said Act.

7.The Learned Counsel for Appellant brings it to the notice of this Court that the Appellant had filed the S.M.O.P No.192 of 2000 seeking the relief of 'Restitution of Conjugal Rights' on the file of Family Court and the same was allowed. Further more, the Respondent/Husband had filed S.M.O.P.No.339 of 1998, seeking a relief of Divorce on the file of Family Court, Coimbatore and the same was dismissed as not pressed. In fact, these two aforesaid Petitions were filed under the Special Marriage Act, 1954 and when that be the fact situation, the Respondent/Husband strangely filed D.O.P. No.122 of 2008 on the file of the trial court seeking the relief of divorce, which is impressible.

8.Advancing his arguments, the Learned Counsel for the Appellant submits that the Appellant/Wife performed her obligations as a dutiful wife, but, the Respondent/Husband demanded dowry and treated the appellant with cruelty. Unfortunately, these aspects were not taken into account by the learned Family Court Judge at the time of passing the Impugned Order in D.O.P. No.122 of 2008.

9.The Learned Counsel for the Appellant takes a plea that the learned Additional Principal Judge, (Additional Family Court, Coimbatore had failed to see that despite sincere efforts

by the Appellant/Wife, the Respondent/Husband had wantonly refused to live along with her. Further, only due to complete non co-operation by the Respondent/Husband, the Appellant/Wife is unable to lead a matrimonial life.

10. Conversely, it is contention of the Learned Counsel for the Respondent/Husband that the trial court came to the conclusion that the Appellant/Wife had deserted the Respondent/Husband from 30.03.1992 and further that, she treated him cruelly and consequently granted the relief of divorce in his favour and the same need not to be interfered with by this Court sitting in Appellate Jurisdiction.

11. Admittedly, the Appellant/Wife is Christian and that the Respondent/Husband is Hindu. At the time of marriage on 18.03.1991, the Appellant/Wife was a widow. Further, the Respondent/Husband at the time of his marriage was serving as a clerk in the Postal Department and subsequently he retired voluntarily and is receiving monthly pension.

12. The main grievance of the Respondent/Husband is that the Appellant/Respondent left the marital home and went to her mother's place and when he went there to bring his wife, her family members used abusive language and ill-treated him. Apart from that, the Appellant had failed to prepare food and look after him as dutiful wife. Also that the Appellant had not visited him when he was admitted into the hospital as an in-patient on two occasions. Indeed, the stand of the Respondent/Husband is that only his brother's family took care of him when he was admitted as inpatient in the hospital.

13. According to the Respondent/Husband, the Appellant in the 1st week of August, 1991 (when he was away to the office) came to his house and took her belongings like jewels etc., to her mother's place and abused him with filthy language, when he made a phone call to her through her sister.

14. Added further, the version of the Respondent/Husband is that the Appellant/Wife projected a false complaint as if he demanded dowry and caused cruelty to her (at a time when there was a delay in search of a rented premises). In fact, the Respondent/Husband and the Appellant/Wife lived together at K.R.G. Nagar, Naranasamy House, from 16.03.1992 and she without informing him went out of the house. However, the Appellant/Wife in her counter to D.O.P. No.122 of 2008 had denied the stand taken by the Respondent/Husband.

15. The Respondent/Husband, as P.W.1 before the trial court (in chief examination) had stated the Appellant/ Wife knowing that there was heart patient had not cooked food properly and

served the same to him. Also, that she had not rendered any assistance to him. Therefore, he took treatment twice as an in-patient at the hospital and even during that time, the Appellant went to her mother's residence but not chosen to see him in the hospital and moreover his brother only rendered all health assistance.

16.The Respondent/Husband in his further evidence, as P.W.1 (in Chief Examination) had stated that when he brought the Appellant/Wife and imposed to live with her from 16.03.1992, for the two weeks when she was in the house, five times she went to her mother's house without informing him. Apart from that, his clear cut case is that the Appellant/Wife married him knowing fully well that he was a heart patient.

17.Besides the above, it is the evidence of P.W.1 (the Respondent/Husband) that he has no issues and that his brother's wife had died and during the period when the Appellant/Wife had separated from him, he took food in the hotel and that he had retired from Postal Department and receiving a pension of Rs.6,500/- . Continuing further, at Kovai Puthur, he has four cents of land, which was mortgaged and that he paid the maintenance amount for a period of one year from the year 1997 and later, since they lived together, he had not paid the same.

18.At this stage a cursory perusal of the evidence of P.W.1, (the Respondent/Husband in cross-examination) shows that he had called the Appellant/Wife to live with him jointly in the year 1992 and again, he called her for joint living during the year 1998, but, he could not tell the exact date and month in this regard and that from the date of marriage in the year 1991, they lived in a independent residence.

19.The Appellant/Wife in her evidence as R.W.1 had admitted that after marriage she and her Husband/Respondent resided at Lakshmipuram for two months and resided in his house at Ganapathy, Kattabomman street and later they lived at K.R.G Nagar for three or four months and totally she lived with the Respondent/Husband for the period of one year. From her own evidence, it is candid clear that the Appellant/Wife lived with the Respondent /Husband for a year, only since their marriage on 18.03.1991, out of their 23 years of married life. She had also stated in her evidence that she lived with her mother during the period from separation.

20.The Respondent/Husband's case is that the Appellant/Wife had left the matrimonial house on 30.03.1992 and without his consent, she was residing with her mother. In effect, the plea of the Respondent/Husband is that the Appellant/Wife had left the marital house without any justifiable or reasonable cause.

In this connection, this Court very relevantly points out that R.W.1 (the Appellant/Wife) in her evidence had deposed that it was not correct to state that she had not taken care of her husband by cooking food, when he was un-well and not looked after him. But she had categorically stated in her evidence that even if she was not looking after her husband, his brother's wife would look after him.

21. In the instance case, the Appellant/Wife although had taken a stand that she filed a complaint during the year 1992 before the Deputy Superintendent of Police, Coimbatore and that the Respondent/Husband gave statements not to demand any money and that he gave an undertaking to take back his wife to the marital home, no tangible proof was produced before the trial court, in the considered opinion of this Court.

22. At this juncture, it is apt for this Court to point out the Appellant/Wife as R.W.1 had deposed that the Respondent/Husband had informed the police that he would live jointly with her in a proper manner. As such, this Court unhesitatingly holds that the Appellant/Wife had not discharged her onus as regards the demand of dowry purported to have been made by the Respondent/Husband.

23. Suffice it for this Court to point out that the Appellant/Wife had not mentioned the date of demand of dowry and also she had not proved satisfactorily in regard to allegation that the Respondent/Husband drove her away to obtain money from her parents as dowry. Dealing with the plea of the Appellant that the D.O.P. No.122 of 2008 filed by the Respondent/Husband under Section 10 of the Divorce Act, 1869 is per se not maintainable because of the reason that the Respondent/Husband had got married in terms of Special Marriage Act, 1954, it is to be pointed out that the ingredients of Section 11 of the Special Marriage Act, 1954 does not prevent the Respondent/Husband from seeking a relief by projecting a petition for divorce in terms of the relevant provisions of 'The Divorce Act' (4 of 1869) in the considered opinion of this Court.

24. It is to be borne in mind that 'The Divorce Act, 1869' does not require that parties marriage ought to have been solemnized in any particular form. It would suffice if one of the parties is a Christian when the petition was filed.

25. In reality, Section 2 of the Divorce Act, 1869 extends to [the whole of India except State of Jammu and Kashmir]. Section 3(3) of the Divorce Act speaks of 'District Court' which means in the case of any petition under this Act, the Court of the District Judge, within the local limits of whose original

jurisdiction, [or of whose jurisdiction under this Act, the marriage was solemnized or], the husband and wife, resided or last resided together.

26.The Divorce Act, 1869 can be invoked to dissolve the marriage when either of the Petitioner or the professess, the Christian religion and where the parties to the marriage or domiciled in India at the time of presentation of petition.

27.In the present case on hand, admittedly, the Appellant/Respondent (wife) is a Christian and that the Respondent/Husband is a Hindu and both of them were domiciled in India at the time of their marriage. Therefore, this Court safely concludes that the ingredients of Section 2 of the Divorce Act, 1869 squarely applies to the case of parties in D.O.P. No.122 of 2008. Viewed in that perspective, this Court holds that the D.O.P. No.122 of 2008 filed by the Respondent/Husband on the file of the trial court is perfectly maintainable in law. Accordingly, the contra view taken on behalf of the Appellant/Wife is out rightly rejected by this Court.

28.It is to be noted that Section 10 of the Divorce Act, 1869 refers to 'Ground for Dissolution to Marriage'. As a matter of fact, Section 10(1)(ix) of the Act speaks of a Ground for Dissolution when the Respondent has deserted the Petitioner for at least two years immediately preceding the presentation of the petition. Also Section 10(1)(x) of the Divorce Act speaks of a Ground for 'Dissolution Marriage' when the Respondent has treated the Petitioner with such cruelty as to cause a reasonable apprehension in the mind of the Petitioner that it would be harmful or injuries for the Petitioner to live with the Respondent.

29.Before the trial court it was admitted by the respective parties that the Respondent/Husband was paying the monthly Interim Maintenance at Rs.1,500/- per month. There is no dispute in regard to the fact that in M.C.No.7 of 1995, the Respondent/Husband was directed to pay a sum of Rs.350/- per month towards maintenance. Also that the Respondent/Husband had admitted before the trial court that he was receiving a pension of Rs.9,300/- although Ex.P.10, which he produced showed that he received a pension of Rs.6,831/- in the Month of January, 2010. In M.C.No.158 of 2007, filed by the Appellant/Wife, the Respondent/Husband was directed to pay a sum of Rs.2,500/- per month from the date of order ie., 06.02.2015 passed by the learned Additional Principal Judge, Additional Family Court, Coimbatore and this sum was ordered to be paid on or before 10th of every succeeding English calender month.

30. The word 'Desertion' in its essence means the intentionally permanent forsaking and abandonment of one spouse by the other without the other's consent and without reasonable cause. In fact, it is an altogether repudiation of the obligations of marriage. 'Desertion' is a continuing wrong. Further 'Desertion' is not the withdrawal from a place but from a state of things essential in a matrimonial life in the considered opinion of this Court.

31. Undoubtedly, the term of 'Desertion' is a matter to be inferred from the facts and circumstances of a given case. To put it succinctly, an inference of 'Desertion' may be drawn by a Court of Law from certain facts which may not in another case be capable of leading to the same inference; ie., to mention, the facts have to be necessarily viewed as to the purpose which is established by those acts or by conduct and expression of intention, both anterior and subsequent to the real acts of separation. If there is a separation, the main issue that crops up for rumination is whether the Act is attributable to an animus deserendi? The act of Desertion starts when the factum of separation and the animus deserendi co-exists. However, it is not necessary that the two should start at the same time, as opined by this Court.

32. In regard to 'Cruelty', it is to be pointed out that it can be of two kinds (i) Physical Cruelty (ii) Mental Cruelty or by conduct also. It is to be remembered that casual and small matters arisen between the spouses does not amount to Cruelty as per decision T.K.Saravana Perumal V. Shishikana Perumul reported in (1968) 2 M.L.J. 562.

33. A continuous insulting and denigrative treatment to the other spouses stretching over substantive span of matrimonial life can result in cruelty as per decision Inder Mohan V. Manju reported in A.I.R. 1956 (Del.) at Page 155. Also insults, abuses and violence being a permanent feature of matrimonial life would fall within the purview of the definition of 'Cruelty' as per decision Kaslefsky V. Kaslefsky, (1950) 2 All.E.R.398.

34. Further, the question of 'Cruelty' must be considered in the light of whole of the matrimonial relationship as per decision Valerie V. Meruyn reported in A.I.R. 1975 Mad at Page 322.

35. In case of 'Legal Cruelty' conduct of the wife or husband renders the continuance of cohabitation and the performance of conjugal duties impossible.

36. It is to be noted that there is no point or purpose to be served by the continuance of a marriage which has so

completely and signally irretrievably broken down.

37. In the present case on hand, admittedly, the Respondent/Husband had not pressed the S.M.O.P.No. 339 of 1998 on the file of the Concerned Court based on the compromise entered into between him and the Appellant/Wife. The stand of the Respondent/Husband is that the Appellant/Wife had not complied with the terms of compromise. In fact, in M.C.No.158 of 2007, which was tried along with D.O.P. No.122 of 2008 by the trial court, the Appellant/Wife had candidly admitted that she is living separately for 14 years. Further, in S.M.O.P. No.192 of 2000, filed under Section 22 of the Special Marriage Act, 1954, a direction was issued to the Respondent/Husband to join the Appellant/wife to lead a matrimonial life. However, the Appellant/Wife had not lived with the Respondent/Husband.

38. Be that as it may, on a careful consideration of respective contentions and also this Court taking note of the detailed qualitative and quantitative discussions as mentioned supra and also keeping in mind the attendant facts and circumstances of the present case in an encircling manner, comes to a resultant conclusion that the trial court had rightly allowed the D.O.P.No.122 of 2008 filed by the Respondent/Husband and granted the decree of Divorce by Dissolving Marriage that took place between the parties on 18.03.1991 as per the Order dated 06.02.2015 and the same does not suffer from any infirmities, material irregularities or patent illegalities in the eye of law. Viewed in that perspective, the Civil Miscellaneous Appeal (filed by the Respondent/Wife) is devoid of merits and it fails.

39. In the result, the Civil Miscellaneous Appeal is dismissed leaving the parties to bear their own costs. Resultantly, the Order passed by the Learned Additional Principal Judge, Additional Family Court, in D.O.P. No.122 of 2008 dated 06.02.2015 is affirmed by this Court for the reasons assigned in this Appeal. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

True Copy

Sub Assistant Registrar

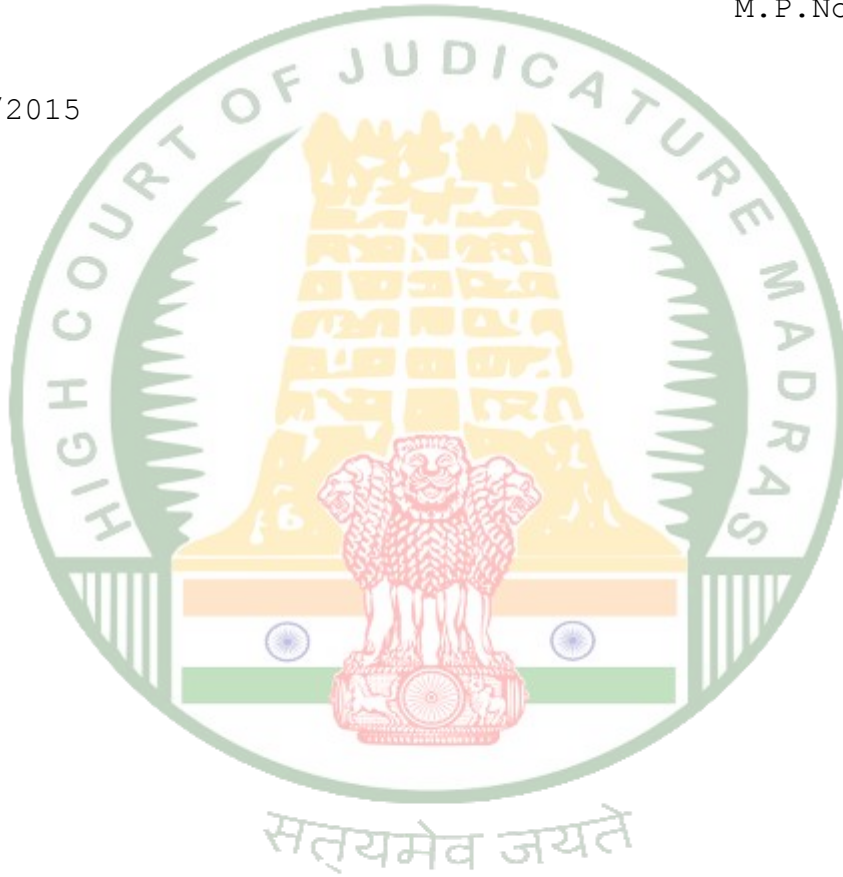
To

The Additional Principal Judge,
Additional Family Court,
Coimbatore

+1cc to M/S.K.S.KarthikRaja, Advocate sr.49628
+1cc to Mr.K.Premkumar, Advocate sr.49557

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