

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2015

CORAM:

The Hon'ble Mr.Justice S.MANIKUMAR
and
The Hon'ble Mr.Justice M.VENUGOPAL

C.M.A.No.887 of 2015

V.Rajagopalan

..Appellant/Respondent

Vs.

T.R.Parimala

..Respondent/Petitioner.

Prayer: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act to set aside the Judgment and Decree dated 19.09.2013 in F.C.O.P. No.2857 of 2008 on the file of the II Additional Principal Judge Family Court, Chennai.

For Petitioner : Mr.C.Rajan

For Respondent : Mr.J.Dilip kumar

J U D G M E N T

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

The Appellant / Husband has preferred instant Civil Miscellaneous Appeal as against the Order dated 19.09.2013 in O.P.No.2857 of 2006 passed by the learned II Additional Principal Judge, Family Court, Chennai.

2. The Learned II Additional Principal Judge Family Court, Chennai, while passing the Impugned Order in O.P.No.2857 of 2008 (filed by the Respondent/Wife as Petitioner) on 19.09.2013 in Paragraph No.24 had observed the following and consequently allowed the Original Petition.

"24. The respondent in his counter and in his evidence has stated that he has suffered lot of humiliation, cruelty and harassment at the hands of the petitioner but prayed for dismissal of the petition for the welfare of the children. Though the respondent has produced documents to prove about his payment for the housing loan and nominated his daughter's name there was misunderstanding and dispute between them and both of them are living separately from the year 2004 and the respondent made admission that till he left Chennai in the year 2005 he has not filed any petition for restitution. Since the petitioner and respondent are

living separately from the year 2004, ie., for the past 9 years the marriage life has irretrievably broken down and considering the above facts and circumstances this Court is inclined to allow the petition and thus the point is answered accordingly."

3.Assailing the correctness of the Order dated 19.09.2013 in F.C.O.P.No.2857 of 2008 on the file of the Learned II Additional Principal Judge, Family Court, Chennai, the Appellant/Husband has filed the present Civil Miscellaneous Appeal contending that the Order of the Trial Court in allowing the O.P.No.2857 of 2008 and granting a decree of divorce by dissolving marriage between the parties is opposed to law, weight of evidence and probabilities of the case.

4.The Learned Counsel for the Appellant urges before this Court that the Trial Court should have dismissed the Petition since there was absolutely no legal evidence in regard to cruelty or desertion and in fact came to a wrong conclusion of surmises without even considering the documentary evidence available in the case.

5.It is represented on behalf of the Appellant that the Trial Court had accepted the payment made by the Appellant/Husband in regard to the housing loan and indeed an endeavour of the Appellant to nominate his daughters' name in respect of the property clearly point out the attachment and his responsibility towards family.

6.Yet another stand of the Appellant is that the Trial Court had failed to appreciate that it is the Respondent/Wife, who had left the matrimonial home with children without sufficient cause and living separately with the daughters under the umbrella of her father, which point out that all his not well with the Respondent/Wife.

7.Advancing his arguments, the Learned Counsel for the Appellant submits that the Respondent/Wife had failed to perform her matrimonial duties towards her family and separating the children from their family life and leading a separate life had caused immense hardship to the Appellant/Husband and unfortunately these vital aspects were not taken into account by the Trial Court at the time of passing Orders in the Original Petition.

8.Expatiating his contention, the Learned Counsel for the Appellant proceeds to take a stand on behalf of the Appellant that the Trial Court had failed to take note of the fact that the property purchased jointly in the name of Wife and also education expenses meted out by him in favour of his daughter and the LIC policies taken out by him would all go to show that he was dutiful towards his family and the children.

9.According to the Learned Counsel for the Appellant, the

children of the Appellant visit him and have cordial relationship and there was nothing to suggest on record to show that the separation was permanent. Also that the children were not examined as witness before the Trial Court to substantiate the allegation of cruelty and desertion made by the Respondent/Wife.

10.It is not in dispute that the marriage between the Appellant and the Respondent took place on 19.02.1986 at Sri Ramakrishna Kalyana Mandapam Raju Naicken Street, West Mambalam, Chennai according to Hindu Rites and Customs. Both parties, after marriage, resided together at Kodambakkam, Chennai. Also it is an admitted fact, that two female children, viz., Shalini and Divya were born to the parties on 07.12.1986 and 05.10.1990 respectively.

11.Before the Trial Court in F.C.O.P. No.2857 of 2008, the Respondent/Wife had averred that from the date of marriage, the Appellant's behaviour was not conducive to family life and he was quarreling, aggressive, short-tempered, irresponsible and suspicious in nature. Moreover, he used to pickup quarrels to flimsy matters and was always torturing and harassing her both mentally and physically. As a matter of fact, the Appellant/Husband had not mended his ways of inflicting cruelty and also had not changed his spendthrift ways etc.,

12.At the time of marriage, the Appellant, was employed as Superintendent at Kalpana Lamps and Components Limited, Chennai. The categorical stand taken by the Respondent/Wife in the Original Petition was that the Appellant/Husband had no affection towards her and the children and the mental cruelty hardship caused by his abnormal behaviour caused lot of tension and agony pushing the marriage life brink of disaster.

13.The clear cut stand of the Respondent/Wife in the Original Petition before the Trial Court was that in fact she was forcibly thrown out of the matrimonial home and the daughters were unable to collect their dress materials and other belongings required for their day today life, as a result of which she gave a complaint on 26.07.2004 before All Women Police Station at Ashoknagar and further she was forced to file a similar complaint before the Police due to physical and mental torture caused to her and her children.

14.It is the plea of the Respondent that after 26.07.2004, the Appellant/Husband deserted the Respondent and her two daughters. She also issued a legal notice dated 19.10.2006 claiming maintenance from the Appellant, though he was employed in Kalpana Lamps and Components Limited and also doing contract jobs. Indeed, the Appellant sent a reply on 15.11.2008.

15.Continuing further, the case of the Respondent is that she works in a Private Company and spending her income towards children education and is living with children and her father, who is a

pensioner and he also contributes his pension for maintaining her and her children. As such, the Respondent had filed the Original Petition F.C.O.P.No.2857 of 2008 praying for passing of an Order by the Court in dissolving her marriage that took place on 19.02.1986 between herself and the Appellant.

16.Before the Trial Court, the Appellant/Husband had filed a detailed counter stating that the Original Petition filed by the Petitioner/Wife is not maintainable their in Law or in Facts. Further he had stated that the Respondent/Wife and the Children were living lavishly with his hard earned money and he hails from highly educated, decent and respectable family. Further more, he has educated his daughter, viz., Shalini, B.Sc., Visual Communication out of his hard earned money.

17.Presently the Appellant's daughter, namely, Shalini is employed in a Multinational Company and drawing a salary of Rs.40,000/-. At the time of his marriage, he was employed as Superintendent at Kalpana Lamps and Components Limited, Chennai. During the year 1990, he secured employment in Excel Fibre Glass Pvt., Limited, Perungulathur, Chennai as Clerk. He was promoted as Manager and after marriage, the Respondent/Wife started to behave indifferently towards him for obvious reasons known to her.

18.The Appellant in his counter had averred that the Respondent/Wife's father is a retired person, who is an instrument in creating problem between them. Further more, on 26.07.2004, he had separated from his Wife/Respondent and living separately. Only because of the cruelty suffered by him at the hands of the Respondent / Wife, he had lost his job and unable to pay the installments LIC, Housing and Finance.

19.That apart, on 26.07.2004, the Respondent/Wife voluntarily left matrimonial home without reasons along with dress utensils given at the time of marriage. Further, she had taken her daughters forcibly against their wish.

20.Before the Trial Court, the Respondent/Wife was examined as P.W.1 and Exhibits P.1 to P.14 were marked on her side. On behalf of the Appellant/Husband's side, witness, R.W.1 to R.W.3 were examined and Exhibits R1 to R12 were marked.

21.It comes to be known that Ex.P4 was the complaint dated 05.02.2004 given by the Respondent/Wife to the Inspector of Police, Kodambakkam against the Appellant/Husband as regards her earlier complaint dated 31.01.2004 her willingness to live separately about the submission letter by the Appellant/Husband. Ex.P6 is the Complaint dated 26.07.2004 given by the Respondent/Wife addressed to the Inspector of Police, All Women Police Station, Ashok Nagar, Chennai.

22. In the instant case, the Appellant/Husband produced documents to establish about his payment towards housing loan etc., It is an admitted fact that the parties are living separately from the year 2004 and that the Appellant/Husband admitted that during the year 2005, he left Chennai. Also, that in the instant case, both parties have not filed any Petition seeking the relief of "Restitution of Conjugal Rights" under Section 9 of the Hindu Marriage Act, 1955.

23. At this stage, a mere running of the eye over the contents of the Petition in F.C.O.P. No.2857 of 2008 filed by the Respondent/Wife under Section 13 (1) (ia) and (ib) of the Hindu Marriage Act, 1955 point out that the Respondent/Wife in Paragraph No.24 had clearly mentioned that she had undergone agonising marital cruelty and torture and also that the Appellant/Respondent never changed his attitude to lead a normal married life. Further, the Respondent/Wife had averred that through out the married life, the Appellant/Respondent's attitude of non-cooperation and harassment continued till he deserted her, and the children, and also the cruel treatment meted out to them. It is to be noted that the Respondent/Wife in the Petition in Paragraph No.22 had averred that the cruelty of the Appellant/Petitioner was such as to cause apprehension in her mind that there is no possibility for her to live with the Appellant peacefully in her marital life.

24. It is to be borne in mind that the term "Cruelty" is not defined in the Hindu Marriage Act, 1955. Further, the word "Cruelty" cannot be placed in a strait-jacket judicial definition. Admittedly, "Cruelty" is a term with wider connotations. At times, the 'Mental Cruelty' is more damaging than 'Physical Cruelty' in the considered opinion of this court.

25. In so far as the 'Mental Cruelty' is concerned, it continues to affect an individual all along and any amount of healing words/healing touch certainly would not remove the scars, which continue to prick and cause hurt in a continuous fashion. As regards the 'Physical cruelty' is concerned, the injury may not cause a damage to that measure but it would leave a scar to remind one of the incident. However, an individual may suffer cumulative effort of physical and mental cruelty which may result a decision of breaking the thread as per decision Manmohan Singh V. Aneetha Preet reported in 2003 (1) H.L.R. at Page 289 and at Page 305 (Punjab and Haryana).

26. That apart 'Cruelty' for the purpose of Section 13(1)(i-a) of the Hindu marriage Act, 1955 is to be construed as a behaviour by one spouse towards the other which causes a genuine and a reasonable apprehension in the latter's mind that it is not safe for her or him to continue the marital relationship with the other.

27. Undoubtedly 'Mental Cruelty' is a state of mind and feeling with one of the spouses due to the behaviour of the other person. It

is difficult to establish the aspect of 'Mental Cruelty' by a direct evidence. However, the said Cruelty can be inferred from the facts and circumstances of the case. An isolated misbehaviour of a person may not be sufficient to attract 'Mental Cruelty' in the considered opinion of this Court. But the cumulative effect of facts and circumstances emerging from a given case and the evidence emerges from the record would enable a Court of Law to draw a fair inference whether a person in a divorce petition was subjected to Mental Cruelty because of the conduct of the other party.

28. Using filthy language by one spouse or giving threat to make a matrimonial house a hell, amounts to Cruelty. An individual alleging Cruelty and Desertion has to prove it by means of positive evidence. In relation to matrimonial matters, 'Cruelty' is visualised as a conduct of such nature which endangers the living of one spouse with the other. Cruelty for the purpose the Hindu Marriage Act means where one spouse had treated the other and manifested such feelings towards him or her as to have inflicted bodily injury or to have caused reasonable apprehension of bodily injury, suffering or to have injured health.

29. In the present case, the Appellant's side witness R.W.2 in his evidence before the Trial Court had deposed that while things were taken by the Respondent/Wife, the Appellant was standing outside the house and objected her. But R.W.3 had stated in his evidence that at the time of the Respondent/Wife took her things, the Appellant was not there. In this regard there is discrepancy/variance of evidence between R.W.2 and R.W.3 and certainly this discrepancy in evidence was not established that the Respondent/Wife had left the marital house out of her own volition.

30. Be that as it may, in view of the fact that the Respondent/Wife in her Original Petition had categorically averred that the Cruelty meted out by the Appellant/Respondent was such to cause apprehension in her mind that there is no possibility for her to live with her husband peacefully with a view to lead a marital life and also this Court taking note of the entire conspectus of the attendant facts and circumstances of the present case in an integral fashion, and added further, bearing in mind a primordial fact that both the Appellant and the Respondent are living separately from the year 2004 and also that the Appellant had admitted that during the year 2005, he left Chennai, this Court comes to a resultant conclusion that the marital tie between the parties had irretrievably broken down beyond repair. Also that in the instant case, this Court had taken note of the feeling of anguish, disappointment, frustration of the Respondent/Wife because of the conduct of the Appellant/Husband and assessed the facts and circumstances in which two partners of marital life were living and the same were taken note of in a cumulative manner.

31. Suffice it for this Court to point out that nearly 10 or 11 years till date, the parties were living separately, in fact, the

Trial Court had looked into the entire gamut of the matter and rightly allowed the O.P.No.2857 of 2008 filed by the Respondent/Wife and consequently dissolved the marriage that took place between the Appellant/Husband and the Respondent/Wife on 19.02.2006, which does not require any interference in the hands of this Court sitting in the Appellate Jurisdiction. Viewed in that perspective, the Civil Miscellaneous Appeal fails.

In fine, the Civil Miscellaneous Appeal is dismissed leaving the parties to bear their own costs. Consequently, the Order passed by the learned II Additional Principal Judge Family Court, Chennai in O.P.No.2857 of 2008 dated 19.09.2013 is affirmed by this Court for the reasons assigned in this Appeal.

ssd

s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

To

The II Additional Principal Judge Family Court,
Chennai.

+ 1 cc to Mr.C.Rajan, Advocate SR 42908

+ 1 cc to Mr.J.Dilipkumar, Advocate SR 42704

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