



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.07.2015

CORAM:

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI**CMA. (MD) No.101 of 2013****and****M.P (MD) No.1 of 2013**

A.David Arokiaraj : Appellant

Vs.

L.Roslin Sahaya Mary : Respondent

Appeal filed under Section 55 of Divorce Act, to set aside the Judgment and decree passed by the Learned II Additional District and Sessions Judge, Trichy, dated 30.11.2012 in I.D.O.P.No.41 of 2011 and allow this appeal.

For Appellant : Mr.G.Thalaimutharasu

For Respondent : Mr.J.Maria Roselin

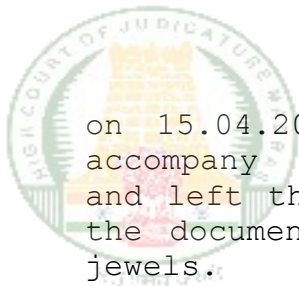
JUDGMENT

The appellant /husband has filed a petition in I.D.O.P.No.41 of 2011 on the file of the II Additional District Sessions Judge, Trichirappalli for dissolution of marriage that took place between the petitioner and the respondent on 08.07.2001, on the ground of desertion and cruelty. The said petition was dismissed by the order, dated 30.11.2012. Against the said order, the present appeal has been filed.

2.The case of the appellant:-

The appellant was working as a Havildar in the Indian Army and at the time of marriage, he was working at Jabalpur. After the marriage, he took the respondent to Jabalpur and was living there in a matrimonial home at Jabalpur as husband and wife. Two male children were born in the wedlock. Out of his earning, he purchased house sites in the name of his two sons and in the name of the respondent. In the property purchased in the name of the respondent, he constructed a house at the cost of Rs.1,40,000/-. At request of the respondent, the petitioner got voluntary retirement from the Army under Voluntary Retirement Scheme.

3. The respondent used to quarrel with the appellant. The respondent being egoist and spend-thrift made all sorts of nuisance with the appellant and left the matrimonial home without informing the appellant. She was demanding money from the appellant and was spending lavishly. She has threatened to commit suicide, if appellant fails to give money to her. Therefore, he used to borrow money from his neighbours and give it to her. On 14.04.2009 in the night, the respondent picked up quarrel with the appellant. She wanted the appellant to accompany her and her family members to pilgrimage to Velankanni. The appellant had to write an exam



on 15.04.2009 for a job. Therefore, he expressed his inability to accompany her and others. The respondent threatened to commit suicide and left the matrimonial home and went to her parents' house taking all the documents relating to the property, pension passbook, ATM card and jewels.

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4. On the very next day, the brother of the respondent came and quarreled with the appellant and attacked the appellant. He sustained severe injuries and he fell unconscious. Without knowledge of the appellant, the respondent obtained transfer certificate of the children from the School. The appellant was not permitted to enter the house of the parents of the respondent and they insulted the appellant. She has not even informed about the death of the respondent's father and was not invited for the marriage of the respondent's brother.

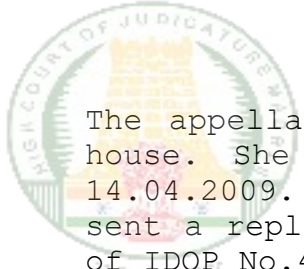
5. The respondent gave a false complaint of dowry harassment before the All Women Police Station, Kuzhithalai on 14.07.2009. During the enquiry, the police advised the respondent to live with the appellant.

6. The respondent is employed in the Co-operative Society at Srirangam from 2009 and voluntarily deserted the appellant. The appellant issued a notice, dated 17.03.2011, through his Advocate for dissolution of marriage. The respondent sent a reply, on 26.03.2011 making false allegations. In the circumstances, the appellant has filed a petition in I.D.O.P.No.41 of 2011 on the file of the II Additional District Court, Trichirappalli for Divorce on the ground of desertion and cruelty.

7. The respondent filed a counter affidavit and denied all the allegations made by the appellant. She has alleged that appellant is addicted to Alcohol and has ill-treated the respondent with cruelty. The appellant had beaten her several times brutally. He is a spend-thrift and was not giving any money for maintenance of the family. The respondent is a Post Graduate and was employed in a Private Firm before the Marriage. The appellant on one occasion assaulted her brutally causing bleeding injury. On seeing this, the brother-in-law (appellant's sister husband) of the appellant, tried to prevent the appellant from beating the respondent. The appellant abused his brother-in-law and alleged that he is having illicit relationship with the respondent. The respondent's father only helped the respondent to buy the house by contributing major portion of amounts invested for construction of house.

8. The appellant is without any job and was not paying any money for maintenance of respondent and children. Therefore, she completed her B.Ed., Course and got a job in Infant Jesus Matriculation Nursery and Primary School at Ramachandra Nagar. She also applied for a job in Trichirappalli District Central Co-operative Bank under Ex-serviceman quota. She got the job and was posted at Sri Rangam. She will be made permanent only after two years. She is maintaining the family from and out of the salary, she receives from the Bank.

9. The appellant wrote a letter to the authorities of the Trichirappalli Central District Co-operative Bank, not to confirm the respondent, in the post. Due to the harassment of the appellant, the respondent gave a complaint to All Women Police Station, Kuzhithalai. During enquiry, the appellant promised to behave properly and seek a job.



The appellant forcibly sent the respondent and her children out of the house. She denied that she voluntarily left the matrimonial home on 14.04.2009. To the notice issued by the appellant, the respondent has sent a reply setting out true and correct facts and prayed for dismissal of IDOP No.40 of 2011.

10. On these pleadings, the trial Court framed necessary points for consideration. The appellant was examined as P.W.1 and 9 documents were marked as Ex.P.1 to Ex.P.9. The respondent examined herself as R.W.1 and examined one Thiru. Antony as R.W.2 and marked 8 documents as Ex.R1 to Ex.R8.

11. The Trial court considering the pleadings and evidence, dismissed the IDOP filed by the appellant holding that he failed to prove that respondent left the matrimonial home without any reasonable cause.

12. Against the said order, the appellant has filed the present appeal.

13. The learned counsel for the appellant contended that the appellant as P.W.1 has let in cogent evidence to show that the respondent voluntarily left the matrimonial home without any reasonable cause. The trial Court failed to appreciate the pleadings and evidence in proper perspective and erroneously dismissed the IDOP filed by the appellant holding that the Petitioner has not proved that the respondent has voluntarily left the matrimonial home and deserted the appellant without any reasonable cause. The learned counsel for the appellant relied on the following judgement:-

2014 (5) MLJ 539 (K. Kuppuraj v. M. Rajasulochana)

"12. After analyzing the evidence on record, the trial Court rendered a finding that the case of the "cruelty" and "desertion" has not been made out by the appellant/husband. It is true that to establish cruelty, there should be a concrete evidence and one or two stray instances and quarrels between the spouses cannot be considered as a ground for cruelty and further the word cruelty itself has not been defined under the Act. Therefore, on going through the entire evidence on record, we find that the appellant has not proved that the acts of the respondent/wife would amount to cruelty and there is a reasonable apprehension in his mind that it would be harmful and injurious for him to live with his wife/respondent and thereby, the appellant has failed to establish the case of cruelty and the trial Court was right in rejecting the relief on the ground of cruelty.

14. The trial Court rendered a finding that the husband/appellant was having illicit relationship with one Subha and in view of the same, the respondent/wife was justified in living separately. The respondent/wife was examined as RW.1 and she deposed that she is aware of the relationship of her husband with one Subha and knowing this fact, she is ready and willing to live with her husband. It is to be noted that when she had no objection to live with her husband though he was having illicit relationship with another lady, the reason given by the Tribunal for separate living by the wife due to her husband's illicit intimacy with another lady, cannot be accepted. It is not in dispute that the respondent/wife had left matrimonial home and living separately for more than seven years.

18. From the aforesaid discussion, it is clear that the wife had not attempted or taken any steps to join her husband by filing a petition before the family Court for restitution of



conjugal rights. If at all she is interested to live with her husband, she could have filed a petition for conjugal rights to establish her stand. Even assuming that her husband was having illicit relationship with one Subha, it is not a hurdle for her to live with her husband as she clearly deposed that she is willing to live with her husband despite knowing that he had illicit relationship with another woman. "

Therefore, prayed for allowing the appeal.

14. Per contra, the learned counsel for the respondent contended that the appellant is an addict to Alcohol. After obtaining Voluntary Retirement from the Army, he did not seek and get any job and was not maintaining the respondent and children. He ill-treated the respondent and he was repeatedly beating her brutally. He has alleged that the respondent is having illicit relationship with his sister's husband. The respondent got a job as a Teacher in Infant Jesus Matriculation Nursery and Primary School at Ramachandra Nagar and subsequently at Trichirappalli Central Co-operative Bank and was posted in Srirangam Branch. The appellant wrote a letter to the Bank authorities and Registrar of Co-operative Authorities not to confirm the appointment of the respondent. The respondent is even now ready and willing to join with the appellant and live with him as husband and wife.

15. The learned counsel for the respondent further contended that the entire evidence and documents were considered by the trial Court and the trial Court has rightly come to the conclusion that appellant has not proved the desertion by the respondent.

16. The learned counsel for the respondent relied on the following judgements:-

I) 2004(1) CTC 26 (Palanivelu vs. Meenakumari)

"9..... But, in the instant case, the appellant/husband failed to prove the allegations of mental cruelty by the respondent/wife with any evidence."

ii) 2012-3 L.W. 351 (Jayashree vs. S.Suresh)

"17. The specific case of the respondent/petitioner is that the appellant/respondent treated him with cruelty and has sought for decree of divorce under Section 13(1)(i-a) of the Hindu Marriage Act. The cruelty alleged in the petition, is mental cruelty and the burden is on the petitioner to prove the same. It is well settled in law that the mental cruelty in Section 13(1)(ia) must be of such nature that the parties cannot reasonably be expected to live together and it is a matter to be determined having regard to the facts and circumstances of the case. The question to be considered is as to whether the accusations alleged in the petition by the petitioner, constitute mental cruelty for sustaining the claim for divorce.

18. In paragraph No.4 of the petition, it is alleged that even since the date of marriage, the respondent-wife was in a belligerent mood and used to pick up quarrels with the petitioner and his parents even for flimsy and trivial matters. There are no particulars mentioned with regard to the date and time of such conduct of the respondent-wife and the allegation is vague only.

"

iii) AIR 1995 Madras 116 (Devakumar v. Thilagavathy)

<https://hcservices.ecourts.gov.in/hcservices/> "17. In this case, we have already narrated the circumstances under which the respondent (wife) was driven to the stage of attempting to commit suicide. She became helpless woman



in that new house, and the appellant did not take any steps to protect her in time. Her conduct will never amount to cruelty. The ground of desertion is also not made out. We do not find any reason to interfere with the finding of the Court below. "

iv) 2012(2) CTC 607 (P.Abirami vs. D.E.Tamilarasan)

"27. In the decision reported in Samar Ghosh v. Jaya Ghosh, 2007(3) CTC 464 (SC): 2007(4) SCC 511, the Apex Court has held that mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty. In the same decision, the Apex Court has further held that the married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party and longer, may amount to mental cruelty.

28.As has been pointed out above, the acts alleged against the Appellant by the Respondent, which according to him amounts to mental cruelty not only have not been stated with material particulars, but the same have not been proved. Even otherwise assuming the acts have been proved, in our considered view, the same can be only termed as trivial in nature and it is the normal wear and tear of the married life, which happens in day-to-day life and therefore, the same would not be adequate for grant of divorce on the ground of mental cruelty."

17.Heard the learned counsel appearing for the appellant and the respondents. I have carefully perused all the materials on record and considered the arguments of both parties and considered the judgment relied on by both counsel.

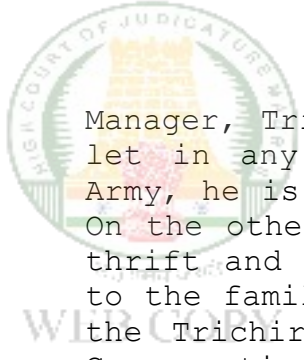
18. The points for consideration in this appeal are:-

i)Whether appellant proved the allegation of desertion and cruelty made against respondent.

ii)Whether appellant entitled to decree of dissolution of marriage.

19. The appellant examined himself as P.W.1 and gave evidence as stated in the petition. He has not examined any independent witness to prove his averments that respondent deserted the appellant and left the matrimonial home without any reasonable cause or respondent's brother beaten him brutally. He has stated that several mediation and Panchayat were held, but respondent did not agree to join with the appellant in matrimonial home. He has not examined any person, who mediated in this matter and any of the Panchayatar so as to prove that respondent refused to join him in the matrimonial home. The incidence of cruelty alleged against respondent are trivial in nature as held in the judgments relied on by both counsel for appellant and respondent. The appellant had not proved that the respondent was spend-thrift and used to spend lavishly and that he had to borrow monies from neighbours.

20. On the other hand, the respondent in addition to examining herself as R.W.1 and also examined one Antony as R.W.2. The respondent marked Ex.R3 a copy of the notice issued by the appellant through his Advocate to Tiruchirappalli District Central Co-operative Bank and others. The Ex.R5 & Ex.R6 complaints given by the appellant to the Registrar of Co-operative Societies, Chennai with the copy marked to the respondent. The respondent also marked Ex.R7 reply given by General



Manager, Trichirappalli District Co-operative Bank. The appellant has not let in any evidence to show that after his Voluntary Retirement from Army, he is employed elsewhere and getting income to maintain the family. On the other hand, the respondent has alleged that appellant is a spend-thrift and spending his pension to buy Alcohol and not giving any money to the family. Further, the appellant has given notices and complaints to the Trichirappalli District Central Co-operative Bank and Registrar of Co-operative Societies against the respondent and was trying to prevent the respondent from being made permanent. Even though, the appellant has stated that Mediation and Panchayat were held for re-conciliation with the respondent he had issued a notice through his Advocate for dissolution of marriage.

21. Applying the ratio in judgments relied on by both the parties it is clear that appellant failed to prove cruelty alleged against respondent. Admittedly, the respondent was appointed in Tiruchirappalli Central Co-operative Bank and she was posted in Srirangam Branch. Naturally she has to go to Srirangam to join duty and discharge her duty. In the circumstances, it cannot be said that she voluntarily deserted the appellant.

22. In the above circumstances, I am inclined to accept the version of respondent that she has not deserted the appellant and did not treat the appellant with cruelty, but she and her children were forcibly sent out from the matrimonial home by the appellant and that appellant failed to prove the allegations made against respondent. There is no irregularity or illegality in the order of the lower court warranting interference by this Court.

23. With above observation, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

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To

The II Additional District and Sessions Judge, Trichy,

+1CC to Mr.G.Thalaimutharasu Advocate Sr.No.43469

+1CC to Mr.J.Maria Roseline Advocate Sr.No.43518

GJM/An/MP/14.9.15-6P-4C

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