



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.06.2015

CORAM:

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI
CMA.(MD)No.34 of 2013

Silvia Fidolin alias Meena : Appellant/Petitioner

Vs.

Martin Sahayaraj : Respondent /Respondent

Appeal filed under Section 55 of the Indian Divorce Act praying to allow this Civil Miscellaneous Appeal by setting aside the Decreetal and Fair Order of the I Additional District and Sessions Judge (Protection of Civil Rights) Thanjavur in I.D.O.P.No.43 of 2008 dated 06.08.2012 and grant the decree of divorce by dissolving the marriage solemnized between the appellant/petitioner and the respondent/respondent on 26.08.1993.

For Appellant : Mr.M.Subash Babu

For Respondent : Mr.R.J.Karthick for
Mr.R.Subramanian

JUDGMENT

Challenging the Fair and Decreetal Order of the learned I Additional District and Sessions Judge (Protection of Civil Rights) Thanjavur, in I.D.O.P.No.43 of 2008, dated 06.08.2012, and grant the decree of divorce by dissolving the marriage solemnized between the appellant/petitioner and the respondent/respondent, on 26.08.1993, the appellant has filed the Civil Miscellaneous Appeal.

2.The appellant filed IDOP No.43 of 2008 on the file of the learned I Additional District Judge, (Protection of Civil Rights) Thanjavur praying to dissolve the marriage that took place on 26.08.1993 between the appellant and the respondent.

3. The appellant and the respondent got married on 26.08.1993 in St. Saveriar Church, Vallam. After the marriage, they were living with the parents and sisters of the respondent. The appellant came to know that the respondent was having illicit intimacy with several ladies, even prior to marriage. The appellant was under the impression that the respondent would change his attitude later. On 09.07.1995, a Male child was born, named him as Altrin Dino Balasingh.



4. The respondent and his parents did not treat the petitioner well. They left the joint family and the appellant and the respondent led a separate family. The appellant's educational qualification is M.A., M.Phil, and she is working as a Secondary Grade Teacher in St. Xavier Middle School. The respondent studied upto 9th standard only and he has no permanent job. The family was run with the income of the appellant. The respondent is having inferiority complex and used to assault the petitioner and ill-treat her and demanded money. The respondent was having contact with one Queen, who is working with the sister of the respondent Jeyanthi.

5. The appellant sent the respondent to Kuwait for welfare of the child, by giving 1,50,000/- on 09.01.1996. He returned to India within one year, since he sustained injury on Spinal Cord. The appellant spent Rs.4,00,000/- by selling her 40 sovereigns of jewels and by getting loans, for medical expenses of the respondent. Subsequently, also the married life of the appellant and the respondent is not cordial and smooth. In the year 2006, the respondent stolen the jewels and money of the appellant and alleged to have gone to Singapore. After one month, he returned to India after spending entire money. He did not live with appellant and their son, but lived somewhere else. He used to come at the time of salary of the appellant to get money. For last two years (before filing of OP), there was no contact between the appellant and the respondent.

6. On 05.03.2008, the respondent demanded money from the appellant and she refused to give any money. He tried to kill her with iron rod. On 19.03.2008, the appellant issued a notice through her advocate demanding divorce and respondent sent a reply notice with false allegations. On 10.04.2008, the respondent demanded to transfer the house in his name. The appellant only constructed the house by getting loan from LIC. In the circumstances, the respondent threatened to kill her. On 11.04.2008, the appellant gave a complaint before All Women Police Station, Vallam. For the above reason, the appellant filed OP, for divorce.

7. The respondent filed counter affidavit and denied all the allegations made by the appellant. The respondent specifically denied the allegation that he was having illicit intimacy with so many ladies as baseless and highly defamatory.

8. According to the respondent, the marriage was love marriage. But right from the beginning, the appellant used to pick up the members of the respondent's family, for petty reasons showing the fact that she was highly qualified and the respondent was studied upto 9th standard and began to treat the



respondent as a servant. The respondent tolerated the ill-treatment of the appellant only for the welfare of the minor.

9. At the time of marriage, the appellant was not studied. After marriage only, with the co-operation rendered by respondent, she was able to finish her studies. At that time, appellant was jobless. The respondent, after marriage, was doing private Cable T.V. Business in Vallam areas and from that income, he was able to run the family. Only through the help and co-operation of the respondent, the appellant got a job. The respondent denied that he assaulted the appellant demanding money and denied any contact with one Queen co-worker of his sister.

10. The appellant did not give Rs.1,50,000/- for the respondent to go to Kuwait. The respondent using his hard earned money and getting loan from his friends went to Kuwait, and there, he met with an accident and so he returned to India. The appellant did not spend Rs.4,00,000/- for medical treatment of the respondent, by selling 40 sovereigns of jewels and borrowing money. The respondent also denied that he went to Singapore by stealing the money and jewels from the appellant.

11. The appellant is leading a wayward life leaving her minor child and husband. Due to bad acts of the appellant and fear of the appellant, the minor child was afraid of going to his mother.

12. The house was constructed through the income of the respondent in the name of the appellant. The respondent never demanded salary from the appellant. He specifically denied the allegation that he demanded salary from the appellant on 05.03.2008 and stated that he did not assault her with iron rod. The appellant has given complaint to the police on false allegation to threaten the respondent. The respondent has sent a reply notice, dated 27.03.2008, for the notice issued by the appellant on 19.03.2008. The appellant was only a name lender to the house and the plot was purchased by selling the plot belonging to the respondent. The appellant and respondent took loan from LIC, by producing their documents and constructed a house. The allegation that the respondent demanded the transfer of the house in his name, is false. The respondent and his son are living separately in the interest of minor child and for his studies. The superiority complex of the appellant is such that she has shown herself as head of the family in the Ration Card. Therefore, the respondent sought for dismissal of the O.P.

13. On these pleadings, the learned First Additional District Munsif, Karaikudi, framed point for consideration, as to whether the appellant is entitled to the relief of divorce, as prayed for.



14. The learned Judge after considering the pleadings and evidence, dismissed the O.P., by the fair and decreetal order, dated 06.08.2012. Against, the said order, the present CMA is filed.

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15. The appellant examined herself as P.W.1 and marked 7 documents as Exs.P1 to P7. The respondent himself was examined as R.W.1 and his minor son was examined as R.W.2 and he did not mark any documents.

16. The appellant did not let in any evidence with regard to Adultery alleged to have been committed by the respondent. The learned counsel for the appellant at the time of argument fairly conceded that the appellant is not pressing the ground of adultery. The learned I Additional District Judge, therefore, considered the question whether the respondent treated the petitioner with cruelty as alleged by the appellant. The respondent has stated that only after the marriage, the appellant obtained the educational qualification of M.A., M.Phil., with the help and co-operation of the respondent. Further, he has stated that at the time of marriage, the appellant was un-employed and the family was run with the income of the respondent. Only with the help and co-operation of respondent, the appellant got the job. The appellant has not produced any documents to show that she obtained M.A., M.Phil., qualification even before the marriage and that she was employed at the time of marriage. The learned Additional District Judge rightly concluded that the appellant could have easily disproved the statement of the respondent by filing certificates with regard to her educational qualification and proof for employment before marriage. Therefore, there is no infirmity in the conclusion of the learned Judge that the statement of the respondent is correct.

17. The disputed house is Plot No.8, TKS Nagar, Vallam, Thanjavur. The appellant in the complaint before the learned Judicial Magistrate No.II, Thanjavur, has stated that from 5.3.2008, she has gone to her house of her mother at Ponmalaipatti Village, Trichy District, and she is living there along with her mother from 5.3.2008 onwards.

18. Therefore, the contention that on 10.04.2008, the respondent demanded to transfer the house in his name is contra to the version given in the complaint before the learned Judicial Magistrate, marked as Ex.P6. Therefore, the learned Judge has held that the respondent torturing the appellant on 10.04.2008 in Plot No.8, TKS Nagar, Vallam, would not arise. Further, it is admitted that the above said property was acquired by Highways Department under the acquisition proceedings. The house property was demolished by the Government after taking possession and compensation amount was deposited into Court. The appellant has



stated that her address in the petition and proof affidavit as Plot NO.8, TKS Nagar, whereas she was residing with her mother at Ponmalaipatti, at Trichy. Therefore, the learned Judge rejected the allegation of the appellant that the respondent, on 10.04.2008, demanded transfer of property and tried to kill her. Another reason for rejecting the contention of the appellant with regard to cruelty is that she did not go and visit her son. She visited her son only he was studying 8th standard. At the time of trial, their son was studying in Polytechnic doing Diploma course. He also gave evidence as R.W.2 on behalf of the respondent. The learned counsel for the appellant argued that the respondent during the trial of O.P., agreed to give consent for divorce provided 50% of the value of property is given to him. According to the learned counsel for the appellant, this statement of the respondent is clearly proves that he was torturing the appellant for transfer of house in his name. The learned Judge rejected this contention holding that there is a dispute with regard to title of property and civil suit is pending in this regard. The learned Judge has rightly held that in the O.P., for divorce, the question of title cannot be gone into and that judgment of criminal court, is not binding on the Civil Court.

19. The learned counsel for the appellant vehemently argued that the trial court dismissed the O.P., for divorce rejecting the contention of the appellant on surmises and conjectures. The learned Judge did not take into consideration the evidence of P.W.1 and P.W.2 in proper perspective. The learned Judge ought to have seen that the appellant completed her Graduation even before marriage and on assumption and presumption, came to the conclusion that the respondent alone helped the appellant to complete her Graduation and got the job for the appellant. No proof was produced for this statement. The learned Judge erred in believing the evidence of R.W.2, minor son, who was always under the custody of respondent/R.W.1. The respondent tortured and influenced the minor son in giving evidence before the Court. The learned Judge ought to have held that the appellant has proved cruelty committed by the respondent. For the above reason, sought for allowing the appeal.

20. Per contra, the learned counsel for the respondent submitted that the learned Judge has considered the pleadings, evidence and all the materials on record and appreciated the same in proper perspective. The appellant has not made out any case for setting aside the fair order of the learned Judge.

21. For the reasons stated above, I hold that the appellant has not proved cruelty meted out to her by the respondent. The learned Judge has properly appreciated the pleadings, evidence, both oral and documentary in proper perspective. Therefore, the Civil Miscellaneous Appeal is dismissed as devoid of merits.



22. Accordingly, this appeal is dismissed. No costs.

Sd/-

Assistant Registrar (Per Admn)

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/True Copy/

Sub Assistant Registrar

To

The I Additional District and Sessions Judge
(Protection of Civil Rights) Thanjavur

+1cc to MR.R.Subramanian, Advocate Sr.No.31061

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