

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 09.11.2016

DATE OF DECISION:23.11.2016

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

C.M.A.No.531 of 1999

Mr.Thirunavukkarasu Appellant/Petitioner

Vs

Mrs.Allagammai alias Thenmozhi ... Respondent/Respondent

This appeal is filed under Section 19 of the Family Court Act against the order passed by the Family Court, Pondicherry dated 02.02.1999 in M.O.P.No.128 of 1997.

For Appellant :Mrs.Nalini Chidambaram
Senior Counsel for
Ms.C.Uma
for M/s.Silambanan Associates

For Respondent :Mr.AR.L.Sundaresan
Senior Counsel
for Ms.AL.Ganthimathi

J U D G E M E N T

R.Subramanian, J

The unsuccessful husband, whose petition for divorce on the ground of cruelty was dismissed by the Family Court, Pondicherry, is the appellant in this appeal.

2. The petitioner has sought for the relief of divorce on the ground that the respondent has caused cruelty. The marriage between the petitioner and respondent, took place on 5.06.1997 at Devakottai. Stridhana and gifts received by the wife at the time of marriage amounting to about Rs.10,000/- was handed over to the petitioner's father and he executed promissory note for the said amount on 12.06.1994, agreeing to repay the same with interest at 12% per annum.

3. It is the case of the petitioner that he shifted to Madras to look after the Ice factory business of his father and even while looking for a house in Madras, he was frequently visiting the respondent at Devakottai. According to him to the relationship between him and the respondent even during his short stay at Devakottai, was not cordial and the respondent was in the habit of picking up quarrels for trivial issues and abusing the petitioner. It is on record that the petitioner and respondent are first cousins. The spouses, came to Madras in January, 1978 and settled down in a rented house. The relationship of the spouses, become worse and respondent/wife did not show love and affection towards the petitioner. She developed the habit of going to her parents house without even informing the petitioner.

4. It is the case of the petitioner that he had established a business at Pondicherry and the spouses shifted to Pondicherry in 1982. The respondent had attempted to immolate herself by pouring kerosene over her body. The petitioner, with the help of his brother, was able to prevent the same. The parents of the respondent on being informed about the said attempt took her to Devakotti, promising to advise her and convince her to lead a normal life with the petitioner. After much persuasion, the respondent joined the petitioner during 1983, nearly after more than a year.

5. The petitioner would further contend that during the year 1990, the respondent without informing the petitioner left the matrimonial home and went to Devakottai to live with her parents. Several steps taken by the petitioner to bring back the respondent to Pondicherry were all of no avail. It is claimed that the respondent had threatened to commit suicide, if she is compelled to return to the petitioner's house. In 1995 the respondent's relatives had required the petitioner to return sridhana property with interest as stated in the promissory note executed between the petitioner's father at the time of marriage on 22.10.1983 and accordingly the petitioner paid a sum of Rs.1,28,325 by way of DD in favour of the respondent.

6. The petitioner had moved the family Court Pondicherry on 20.08.1997 contending that there has been no cohabitation after 1990 and sought for divorce on the ground of cruelty.

7. The respondent resisted the said claim denying the allegations in the petition and stating that she has always been ready and willing to live with the petitioner at Pondicherry. She had also specifically denied the claim relating to the attempt of self immolation and she would also blame the petitioner for the present situation. She would claim that it was the petitioner who shuned her and avoided companionship.

8. She would also state in the counter that though the petitioner attended all important functions in the respondent's family, including the marriage of her two sisters, he refused to take her back to Pondicherry. It is her further case that the attempts reunite the couple, made by the several relatives also failed. The respondent would finally state that she is ready and willing to join the petitioner and live with him either at Pondicherry or in any other place of his choice.

9. The petitioner had examined himself as PW1 and one Somsaundaram was examined as PW2. Devaki who worked as maid servant in the house of the petitioner at Pondicherry was examined as PW3. Exs.P1 to P11 were marked on the side of the petitioner. The respondent examined herself as RW1, she also examined three other persons as RWs 2 to 4. Exs.R1 and R2 were produced by the respondent.

10. On a consideration of the pleadings and the evidence on record, the learned Family Judge, Pondicherry framed the following issues:

1. Whether the respondent during 1990 left the petitioner without informing him and stayed at her parents house without any justifiable reason?
2. Whether the respondent acted in such manner which amounted to cruelty to the petitioner?
3. Whether the petitioner ill-treated the respondent which caused her mental cruelty on account of discarding her?
4. Whether the petitioner is entitled to for a decree as prayed for?
5. What other relief the petitioner is entitled to?

11. On consideration of oral and documentary evidence, the learned Family Judge came to the conclusion that the petitioner has not been made out the case of mental cruelty as pleaded by him. Though desertion was not made a ground for divorce, the learned Family Judge, in view of the evidence let in, also went in the issue and held that the petitioner has not made out desertion also. On the above findings, the learned Family Judge, dismissed the divorce petition filed by the petitioner.

12. Aggrieved by the same, the petitioner has come forward with the above appeal.

13. We have heard Mrs.Nalini Chidambaram, Senior Counsel assisted by Ms.C.Uma for M/s.Silambannan Associates for the appellant and Mr.ARL.Sundaresan, learned Senior Counsel for Ms.AL.Ganthimathi appearing for the respondent. The following points emerge for consideration in the appeal.

1)Whether the petitioner has made out a case of cruelty so as to entail him for decree for divorce under Section 13(1) (1a) of the Hindu Marriage Act?

2)Whether the respondent is guilty deserting the petitioner without reasonable cause?

14. Mrs.Nalini Chidambaram, learned senior counsel appearing for the appellant would contend that though the marriage took place in 1977, the parties have not been living together for a very long time and as such the marriage has irretrievably broken down. She has also taken us through the evidence on record to justify the claim for divorce. Countering the said argument, Mr.ARL.Sundaresan, learned Senior counsel appearing for the respondent would submit that even assuming that the parties have been living apart, that by itself cannot form the basis for grant of divorce.

15. Therefore, the question whether the petitioner is entitled to divorce has to be gone into independent of the fact that the spouses have been living separately for a considerably long period. At this juncture, it should be pointed out that the appellant is aged about 63 years and the respondent is at the aged about 55 years. The main ground on which the divorce sought is cruelty and the petitioner would justify the claim of cruelty based on the attempted self immolation by the respondent in the year 1982. Even for the attempted self immolation, there is no independent evidence except, the interested testimony of the petitioner and his brother PW2. Ex.B11 is a letter dated 24.06.1982 said to have been written by the father of the respondent, which of course reveals that there has been some misunderstanding between the spouses. In the said letter, the father of the respondent had assured that his daughter would behave properly.

16. It is an admitted case of the parties that the respondent joined the petitioner in October 1983 and they lived together till 1990 for nearly 7 years. We are therefore of the opinion that the so-called attempted self immolation, even if true, is not available to the petitioner, to seek divorce on the ground of cruelty. We find that by his subsequent conduct of taking the wife back with him in 1990 the petitioner has condoned the act of cruelty. The petitioner has produced a series of letters Exs.P6,P7,P8, P9, P10, which have been written by the respondent to one Lakshmi daughter of PW3 and PW3 herself. These letters have been written between 1992 to 1998. We have gone through all the said letters. From the language used in the said letters, we are unable to infer any kind hatred between the spouses.

17. In fact in some of the letters, the respondent enquired as to why the said Devaki is planning to quit the employment with the petitioner. In Ex.P7 dated 19.03.1992, the respondent had enquired as to why, Suresh namely, son of PW3 is not going to work in the shop of the petitioner. We have also gone through the oral evidence of PW1 to PW3 and RW1 to 4. A reading of the evidence on record would clearly show that there had been no bitter fights between the spouses. Even PW3 would depose as follows:

“ ,,,,, நான் வேலை செய்யும் பொழுது இருவரும் சச்சரவு, செய்து கொள்வார். பெரிய சண்டை ஒன்றும் வந்ததில்லை. ஆனால் அடிக்கடி பேசாமல் சச்சரவு, செய்து கொள்வார்கள். நான் அவர்கள் வீட்டில் இரண்டு வருடங்கள் வேலை செய்தேன்.....”

“ ,,,,, மனுதாரரும், ஏதிர்மனுதாரரும் சண்டைபோடுவதும், நான் கேட்டால், அதற்கு ஏதிர்மனுதாரர், எங்களுக்குள் சண்டைபோட்டு கொள்வோம் அதை கேட்க கூடாது என்று கூறுவார்.....”.

The respondent in her evidence has stated that she in fact attempted to rejoin in the year 1994 and since the petitioner did not allow her inside the house, she had to go to Mayiladuthurai to stay in her relatives place at about 11 P.M. This evidence of the respondent has been corroborated by the evidence of RW3. RW4 has also given evidence that attempts to rejoin made by the respondent were rejected by the petitioner.

18. The learned Family Judge had non-suited the petitioner on the ground that the allegations of cruelty made by him against the respondent have not been established and he also concluded that the claim of desertion also stood rebutted by the evidence let in by the respondent to the effect that her attempt to rejoin the petitioner failed only because of the attitude of the petitioner. In such circumstances, we are unable to agree with the learned Senior counsel for the appellant/petitioner that the petitioner is entitled to decree for divorce on the ground of cruelty and desertion. The irretrievable broken down of the marriage or the fact that the parties have been living apart for several years cannot be a ground for divorce on the facts and circumstances of the case.

19. For the foregoing reasons we do not see any ground to interfere with the findings of the learned Family Judge and we are constrained to dismiss the appeal confirming the fair and decreetal order of the Family Judge in M.O.P.No.128 of 1997 dated 02.02.1999.

20. In fine the appeal is dismissed. However considering the circumstances of the case, there will be no order as to costs. Consequently the connected CMP.No.6386 of 1999 is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vk

To

The Judge,
Family Court, Pondicherry.

+1cc to M/S.A.L.Ganthimathi, Advocate Sr.68406
+1cc to M/S.C.Uma, Advocate Sr.68141

C.M.A.No.531 of 1999

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srg 09/01/2017

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