

BEFORE THE HIGH COURT OF MADRAS

Reserved on : 30.11.2016

Pronounced on : 20.12.2016

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.A.Nos.335 of 2007 & 466 of 2007
and
M.P.No.1 of 2007
in
CMA.335 OF 2017
AND
MP.1/08 IN CMA.466/07

R.Kala ..Appellant /Respondent in CMA.335/07
..Respondent/Respndent in CMA.466/07

Vs

A.Mudisoodum Perumal ..Respondent/Petitioner in CMA.335/07
..Appellant/Petitioner in CMA.466/07

Prayer in both C.M.As :- Appeals filed under Section 19 of the Family Courts Act, against the Judgment and decree passed in H.M.O.P.No.233 of 2004 dated 30.10.2006 on the file of Additional District & Sessions Judge, Fast Track Court No.IV, Poonamallee.

For Appellant in C.M.A.335 of 2007
& respondent in C.M.A.466 of 2007 : Ms.M.Divya,
for
Mr.K.Govinganesan

For Respondent in C.M.A.335 of 2007
& appellant in C.M.A.466 of 2007 : Mr.A.Muthukumar

JUDGEMENT

R.SUBRAMANIAN, J.,

C.M.A.No.335 of 2007 has been filed by the wife challenging the decree of divorce granted by the learned Additional District and Session Judge, Fast Track Court No.IV, Poonamallee.

2. C.M.A.No.466 of 2007 has been filed by the husband challenging the direction of the learned Additional District and Sessions Judge, Fast Track Court No.IV, Poonamallee, permitting the wife and her children to live in the first floor portion of the house belonging to the husband.

3. Both the appeals arise out the proceedings in H.M.O.P.No.233 of 2004 filed by the husband seeking divorce on the ground of cruelty and conversion to christianity.

4. In his petition for divorce, the husband would contend that the spouses got married on 16.09.1989 at Nagercoil and two children were born out of the said wedlock (now both the children are majors). The husband would claim that the respondent/wife had misrepresented that she belongs to Hindu Sambavar community, whereas she is actually a christian.

5. According to the husband, the wife has been practising christianity without his knowledge and she has also invited people belonging to the pentecostal mission to perform prayers in his house. It is the further case of the husband that in 1998, the wife removed the traditional Thali and started using a minor chain with a heart shaped pendent, which is normally used by christians. His wife also started going to church and meeting places of the pentacastol mission. Since the wife did not change her attitude despite several requests made by him, he had to seek the intervention of the elders. The respondent/wife had not chosen to adhere to the advise of the elders and claimed that she would prefer to live as a christian. He would also contend that she refused to attend the marriage of his nephew and proclaimed that marriage is a ceremony of 'sattans' and devils quoting a certain verse from the bible. Since the efforts to make her lead peaceful marital life failed, the husband had issued a notice on 14.09.2002 setting out the above reasons and seeking divorce. The respondent/wife however had not chosen to send any reply to the said notice. The husband would further claim that she has started harassing him by giving false police complaints and those police complaints were eventually thrown out after enquiry. During one such enquiry in the All Women Police Station at Avadi, the respondent/wife had undertaken to live with the petitioner as a Hindu wife. But, however, after some time, she again went back on her own ways and started giving various complaints to the All Women Police Station at Tiruvanmiyur on 26.01.2003, 27.01.2004 and 05.06.2004. All these acts of the wife put together amounted to unbearable cruelty according to the husband. Left without any other remedy, the husband sought for dissolution of the marriage on the above said grounds of cruelty and conversion.

6. The said petition was resisted by the wife contending that the allegation of conversion is false. She had denied the allegations that she arranged for prayers by people belonging to pentacostal mission in the house. As regards the allegation relating to the dispensing with the use of Thali, the respondent/wife would claim that she wore a minor chain for a short period because the Saradu was damaged. The respondent would further claim that she had been a very

obedient wife and the allegations in the petition are all concocted stories to get divorce and lead a wayward life. She would also claim that the husband had not cared for the children. In reply to the allegation that she had not attended the marriage of her husband's nephew, she would state that it was purely an accident and when she had gone to pickup some jewells for her use during the marriage, the petitioner had left her and is now trying to make out a case of cruelty. She would also submit that the children are very affectionate towards the father and they never followed christianity. She would admit having given police complaint and claim that they were done only to protect herself. She would also claim that the local Residents Welfare Association also intervened to amicably settle the dispute between the spouses.

7. The learned Additional District & Sessions Judge who tried the original petition framed the following issues ":-

1. Whether the petitioner proved cruelty and the respondent ceased to be a Hindu?
2. Whether the respondent has proved that she is still a Hindu?
3. To what relief?

8. Before the trial Court, the petitioner examined himself as P.W.1 and Exs.P.1 to P.13 were marked. The respondent examined herself as R.W.1 and Exs.R1 to R3 were marked. On a consideration of the evidence on record, the learned Additional District Judge came to the conclusion that the husband has established the fact that the wife is in fact practising christianity and her acts in removing the Mangal Suthra and wearing a ordinary chain with heart shaped pendent and other activities would cumulatively establish that she had treated the petitioner with cruelty.

9. On the above grounds the learned Additional District and Sessions Judge concluded that the petitioner/husband is entitled to divorce. However, the learned Additional District and Sessions Judge granted divorce subject to the following conditions:

"a) the respondent is entitled to live in the upstairs portion of the house.

b) Petitioner to pay to the respondent a monthly maintenance of Rs.4,000/- from the date of this order for the maintenance of respondent and the two children.

c) The petitioner to take care of the full educational expenses of his two children Avinash and Bindu. "

10. As already pointed out, both the spouses have filed appeals. While the respondent/wife is challenging the decree for divorce, the petitioner/husband is challenging clause No.1 of the above conditions, namely, the permission granted to the wife to stay in the first floor of the house

belonging to the husband apart from granting maintenance.

11. We heard Ms.M.Dhivya, learned counsel appearing for the appellant in C.M.A.No.335 of 2007 and respondent in C.M.A.No.466 of 2007 and Mr. A.Muthukumar, learned counsel appearing for the appellant in C.M.A.No.466 of 2007 and Respondent in C.M.A.No.335 of 2007.

12. The following points arises for determination :-

(1) Whether the petitioner/husband has proved that the conduct of the respondent/wife would amount to mental cruelty so as to enable him to seek a decree for divorce under Section 13(1)(i-a) of the Hindu Marriage Act.

(2) Whether condition imposed by the trial Court permitting the wife and children to continue to live in the first floor of the house belonging to the husband could be maintained?

Point No.1

13. Mrs. M.Dhivya, learned counsel appearing for the appellant/wife would strenuously contend that the husband has not made out a case for grant of divorce. She would submit that the wife is even today practicing Hinduism and there is no truth in the allegations leveled against her. The learned counsel would further submit that the parties are from Nagercoil and it is not uncommon for Hindus in Nagercoil to go to churches and most of the people there have faith in both the religions, namely, Hinduism and Christianity.

14. Per contra, Mr. A.Muthukumar, learned counsel appearing for the Petitioner/husband would contend that the learned Additional District and Sessions Judge had in fact gone into the evidence relating to cruelty and has come to the conclusion that the husband has proved his claim that the respondent/wife has treated him with cruelty. The learned counsel would rely upon the fact that the respondent has not chosen to reply to the legal notice dated 14.09.2002 marked as Ex.P.6, wherein the husband has made specific allegations to the effect that the wife is practicing Christianity and her actions in inviting Christian preachers to the house and created a severe mental agony to the husband, who is a Hindu. Mr. A.Muthukumar, learned counsel has also contended that the insistence on the part of the wife that she would continue to be a Christian is manifested from the contents of Ex.P.13, which reads as follows:

“எனது தகப்பனார் என்னை இந்து முறைப்படி தான் எனக்கு திருமணம் செய்து வைத்தார். ஆனால் எனது கணவரோ என்னை இந்து கோவிலுக்கு கூப்பிடுகிறார். எனக்கு அதில் சிறிதும் விருப்பம் இல்லை. நான் ஒரு கிறிஸ்தவளாகவே இருக்க விரும்புகிறேன். எனவே இதன் மூலம் எனது கணவர் எடுக்கும் எந்த முடிவுக்கும் நான் கட்டுப்படுகிறேன்.”

The learned counsel would also rely upon Ex.P.3, letter written to the respondent/wife by her brother's wife. According to the counsel, the said letter would disclose that the respondent/wife is living as a Christian and she had also made efforts to convert the petitioner to Christianity. The removal of the Mangal Suthra and the replacing of the same with a minor chain with heart shaped pendent was also stressed by the counsel as a ground for divorce.

15. We have gone through the evidence on record. Though the term cruelty has not been defined under the Hindu Marriage Act, the Hon'ble Supreme Court in the judgment reported in Samar Ghosh -vs- Jaya Ghosh, reported in (2007) 4 SCC 511, had given certain illustrations from which an interference of mental cruelty could be drawn. Some of the illustrations are extracted for convenience:-

"(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make it possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(x) The married live 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 any longer, may amount to mental cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the

law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.

Again in para 99 and 100 of the said judgment, the Supreme Court has observed as follows:

"99. The human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

100. Apart from this, the concept of mental cruelty cannot remain static: it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system, etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstance..."

From the above guidelines laid down by the Hon'ble Supreme Court, it could be safely concluded that the degree of the conduct, which may amount to mental cruelty will vary according to the social status of the parties. Many times, their way of life, temperaments, emotions and relationship that have been depending upon their social status play a very important role. If we analyse, the evidence on record keeping in mind the above principles the following position emerges.

16. Though the wife did not convert to Christianity, it is evident that she had a strong inclination to follow Christianity and she in fact is following Christianity. The documentary evidence produced, particularly, the letter, Ex.P3 dated 18.01.1999 would demonstrate that the wife had been complaining to her relatives that her husband is not following Christianity and she had even gone to the extent of seeking the help of preachers in order to make her husband and family to visit churches. No doubt, this action on the part of the wife could be treated as being very secular. It has already been stated the term mental cruelty will depend on the social status of the parties and their peoples also.

17. It is the clear case of the husband that he did not want his wife to practice Christianity or to attend any prayer meetings and it could be seen from the evidence that this very issue has resulted in severe unpleasantness between the spouses, which led to a legal notice being issued demanding divorce. Yet another aspect, which would clinchingly show that the conduct of the wife has been that she would like to be a Christian is the changing of the Mangal Suthra by her without any valid reason. As rightly pointed out by the learned Additional District Judge, the removal of Mangal Suthra by a Hindu wife and its replacement with the minor chain with heart shaped pendent would definitely hurt the sentiments of a Hindu husband. The explanation given by her for changing Mangal Suthra is wholly unsatisfactory. As rightly pointed out by the learned Additional District Judge, we find that the cumulative effect of the behaviour of the wife would definitely constitute mental cruelty entitling the husband to a decree for divorce on the said ground. Therefore, we do not see any reason to interfere with the finding of the learned Additional District Judge on the ground of cruelty.

Point No.2

18. The learned Additional District and Sessions Judge has concluded that the conduct of the wife amounted to mental cruelty and the husband is entitled to divorce on the said ground. However she had imposed a condition that the wife will be entitled to live in the first floor portion of the house owned by the husband. It is the contention of the appellant in C.M.A.No.466 of 2007, when once it is found that the wife is guilty of cruelty and a decree of divorce is granted on the said ground, she cannot claim a right of residence in the husband's house. Therefore, the condition imposed by the learned Additional District and Sessions Judge appears to be very strange and we have no hesitation in setting aside in the said condition No.1 to the effect that the wife is entitled to live in the first floor portion of the house. We are also taking into account the fact that both the children are now majors and the son, who was 14 years old at the time of filing of the petition in the year 2004, is now said to be gainfully employed. The learned District Judge has awarded a sum of Rs.4000/- towards maintenance for the wife as well as children and has also directed the petitioner/husband to take care of the full educational expenses of his two children. We do not find any infirmity with the said two conditions regarding maintenance and the education expenses of the children. For the foregoing reasons, both the points are answered against the wife, namely, the appellant in C.M.A.No.335 of 2007 and respondent in C.M.A.No.466 of 2007.

19. In the result, the appeal in C.M.A.No.335 of 2007 is dismissed and the appeal in C.M.A.No.466 of 2007 is allowed. The decree granted by the learned District Judge

will stand modified and clause 2 of the decree which allows the wife to live in the first floor portion of the house will stand deleted. In other aspects, the judgment and decree of the learned Additional Family Court will stand confirmed. Considering the facts and circumstances of the case, there will be no order as to costs in these appeals.

Sd/-
Asst.Registrar (CO)

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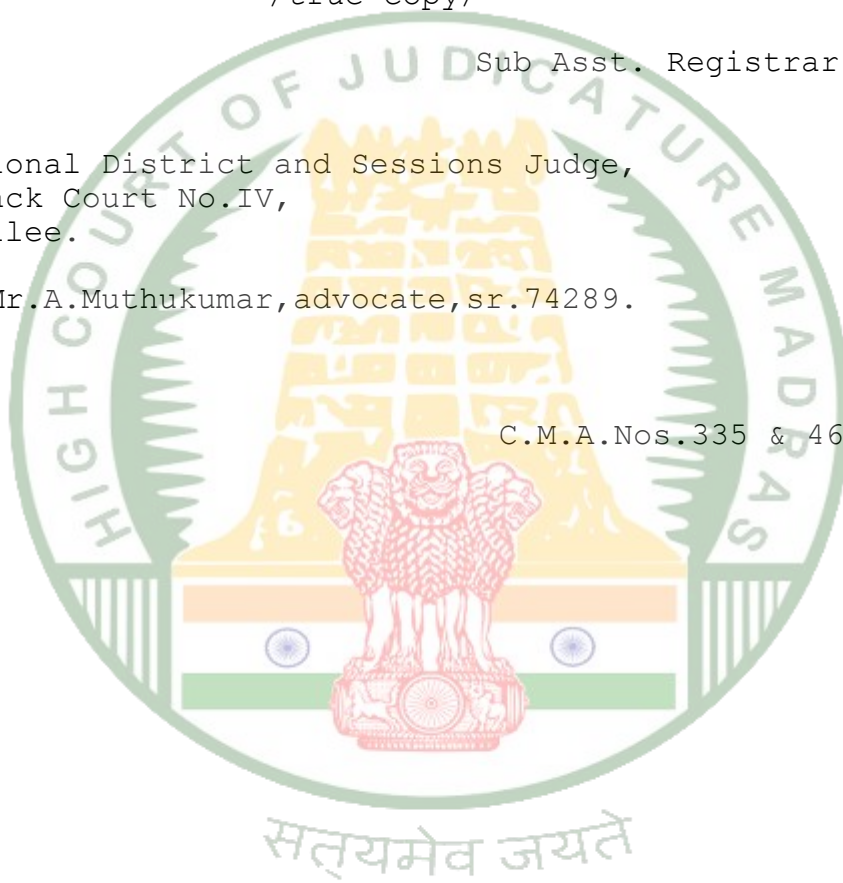
To Sub Asst. Registrar

The Additional District and Sessions Judge,
Fast Track Court No.IV,
Poonamallee.

+1 cc to Mr.A.Muthukumar,advocate,sr.74289.

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C.M.A.Nos.335 & 466 of 2007



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