

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:06.12.2017

Coram

THE HON'BLE MR.JUSTICE A.SELVAM
AND
THE HON'BLE MR.JUSTICE P.KALAIYARASAN

C.M.A.No.1316 of 2016
and
C.M.P.No.10123 of 2016

Shoba @ Shoba Rani Appellant/Respondent

vs.

Venkatesan Respondent/Petitioner

This Civil Miscellaneous Appeal is filed under Section 19 of the Family Court Act, 1984, against the order dated 04.01.2016 passed by the Family Court, Tiruvallur, in H.M.O.P.No.18 of 2014.

For Appellant : Mr.R.Rajesh

For Respondent : No appearance

JUDGMENT

(Judgment of the Court was passed by A.SELVAM.J.)

This Civil Miscellaneous Appeal has been directed against the order dated 04.01.2016, passed in H.M.O.P.No.18 of 2014, by the Family Court, Tiruvallur.

2.The respondent herein, as petitioner, has filed a petition under section 13(1)(ia)(ib) of the Hindu Marriage Act, 1955, praying to dissolve the marriage held between him and the respondent on 05.02.2003.

3.It is averred in the petition that the petitioner has married the respondent on 05.02.2003, as per Caste, Custom and Hindu rites. From inception of marriage, the respondent has misbehaved with the petitioner. On 17.2.2003, a function has been conducted with regard to 'thali change'. Even on that day, the respondent has created unnecessary problems. On the basis of complaint given by the respondent, a case has been registered in Crime No.2 of 2003. After investigation, a final report has been filed under Section 498-A of the Indian Penal Code and also under Section 4 of the Dowry Prohibition Act and the same has been taken on file in Calendar Case No.213 of 2003, on the file of Judicial Magistrate No.II, Tiruvallur. The Judicial Magistrate No.II, Tiruvallur, after conducting proper trial, has acquitted the petitioner. The

respondent has also filed a petition under Section 125 of the Code of Criminal Procedure, 1973 against the petitioner, claiming maintenance on the same Court and subsequently, the same has been dismissed. The respondent has been living separately from 17.02.2003 without sufficient cause. Under the said circumstances, the present petition has been filed for getting the relief of divorce.

4. In the counter filed on the side of the respondent it is averred to the effect that except factum of marriage, the remaining averments made in the petition are false. It is false to aver that from inception of marriage, the respondent has misbehaved with the petitioner. At the time of marriage, gold jewels and also money have been given to the petitioner. After marriage, a separate family has been set up at Manavalannagar. From the date of marriage, the respondent has been ill-treated by the petitioner and others. The petitioner has demanded more sovereigns of gold. Under the said circumstances, a criminal complaint has also been given. It is false to aver that on 17.2.2003, the respondent has left matrimonial abode without sufficient cause. Only due to torture made by the petitioner and others, she left matrimonial abode and there is no merit in the petition and the same deserves to be dismissed.

5. On the basis of the divergent evidence available on record, the trial Court has allowed the petition on two grounds, namely, cruelty and desertion, by way of passing the impugned order and the same is being challenged in the present Civil Miscellaneous Appeal.

6. Even though the respondent has been served with summons, appearance has not been made. Under the said circumstances, the present Civil Miscellaneous Appeal is disposed of on merits on the basis of available records.

7. The learned counsel appearing for the appellant/respondent has contended to the effect that the respondent/petitioner has filed the present petition on two grounds, namely, cruelty and desertion and from inception of marriage, the respondent/petitioner has shown indifferent attitude towards the appellant/respondent and at the time of marriage, so many gold jewels and money have been given to the petitioner and after marriage, he demanded more sovereigns of gold jewels. Under the said circumstances, a criminal complaint has also been given. Since the respondent/petitioner has ill-treated the appellant/respondent, she left the matrimonial abode. Under the said circumstances, the grounds mentioned in the petition are totally false and for the purpose of dis-proving the contentions put forth on the side of the respondent/petitioner, replete evidence is available on the side of the appellant/respondent. But, the trial Court, without considering the evidence available on the side of the

appellant/respondent, has erroneously allowed the petition on the basis of cruelty and also desertion and therefore, the order passed by the trial Court is liable to be set aside and the petition filed by the respondent/petitioner is liable to be dismissed.

8.It is an admitted fact that the respondent/petitioner has filed the present petition on two grounds, namely, cruelty and desertion.

9.In fact this Court has perused the averments made in both the petition and counter and ultimately found that the marriage between the respondent/petitioner and appellant/respondent has been performed on 05.02.2003 and both of them have lived together for a short span of twelve days. After twelve days, problems between them have become emerged. Further it is seen from the records that on the basis of demand of dowry, a complaint has been given by the appellant/respondent and the same has been registered in Crime No.2 of 2003 under Sections 498-A of the Indian Penal Code and also under Section 4 of Dowry Prohibition Act. The investigating agency, after making investigation, has laid a final report before the Judicial Magistrate No.II, Tiruvallur and the same has been taken on file in Calendar Case No.213 of 2003. The Judicial Magistrate No.II, Tiruvallur, after conducting a full trial, has acquitted the accused therein. Further it is seen from the records that the appellant/respondent, as petitioner, has filed M.C.No.11 of 2014, on the file of the Judicial Magistrate No.II, Tiruvallur, for getting maintenance and the same has also been dismissed. Further it is seen from the records that on 17.2.2003, the appellant/respondent has left the matrimonial abode.

10.The main contentions put forth on the side of the respondent/petitioner are that from inception of marriage, the appellant/respondent has misbehaved and from 17.2.2003, she left matrimonial abode without sufficient cause.

11.Even on a cursory look of the documents filed on the side of the respondent/petitioner, the Court can easily discern that from inception of marriage, both the respondent/petitioner and appellant/respondent have not led a peaceful and also happy marital life. Further, even in the year 2003 itself, criminal complaint had become emerged and some other proceedings have also been instituted against the respondent/petitioner. Under the said circumstances it is needless to say that the appellant/respondent has caused mental cruelty to the respondent/petitioner. Further it is seen from the records that from 17.2.2003, the appellant/respondent has left the matrimonial abode without sufficient cause and thereby deserted the respondent/petitioner.

12.Considering the overall circumstances and also evidence available on record, this Court is of the view that both the grounds mentioned in the petition are proved by the respondent/petitioner.

13.The trial Court, after considering the available evidence on record properly, has rightly allowed the petition. In view of the discussion made earlier, this Court has not found any error nor illegality in the order passed by the Court below and therefore, the present Civil Miscellaneous Appeal deserves to be dismissed.

In fine, this Civil Miscellaneous Appeal is dismissed without costs. The order passed in H.M.O.P.No.18 of 2014, by the trial Court, is confirmed. Connected miscellaneous petition is dismissed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

msk

To

The Family Court, Tiruvallur

+1cc to M/s.R.Rajesh, Advocate Sr.No.86250

C.M.A.No.1316 of 2016

RSI (CO)

sm:23.1.2018

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