

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE P. VELMURUGAN

Civil Miscellaneous Appeal No. 365 of 2015
Civil Miscellaneous Appeal Nos. 1574 and 2512 of 2017

C.M.A. No. 365 of 2015
J. Samuel .. Appellant

Versus

S. Jency .. Respondent

C.M.A. No. 1574 and 2512 of 2017
S. Jency .. Appellant

Versus

J. Samuel Manoharan .. Respondent

C.M.A. No. 365 of 2015:- Appeal filed under Section 19 of Family Court Act against the Judgment and Decree dated 18.11.2014 passed in I.D.O.P. No. 15 of 2012 on the file of Family Judge, Salem.

C.M.A. No. 1574 of 2017:- Appeal filed under Section 19 of Family Court Act against the Judgment and Decree dated 18.11.2014 passed in I.D.O.P. No. 15 of 2012 on the file of Family Judge, Salem.

C.M.A. No. 2512 of 2017:- Appeal filed under Section 19 of Family Court Act against the Judgment and Decree dated 18.11.2014 passed in I.D.O.P. No. 25 of 2012 on the file of Family Judge, Salem.

C.M.A. No. 365 of 2015

For Appellant : Mr. R. Karthikeyan
For Respondent : Mr. V. Ilanchezhiyan

C.M.A. No. 1574 and 2512 of 2017

For Appellant : Mr. V. Ilanchezhiyan
For Respondent : Mr. R. Karthikeyan

COMMON JUDGMENT

(Judgment of the Court was delivered by R. SUBBIAH, J)

All these appeals arise out of the Common Order dated 18.11.2014 passed in I.D.O.P. No. 15 and 25 of 2012 on the file of Family Judge, Salem. The counsel for both sides advanced common argument in all these appeals, and therefore, the appeals are taken up for hearing together and are disposed of by this common judgment.

2. For the sake of convenience, the parties shall be referred to as per their litigative status in C.M.A. No. 365 of 2015, as appellant and respondent.

3. The appellant has filed IDOP No. 15 of 2012 on the file of the Family Court, Salem under Section 10 (i) (x) and 10 (i) (vii) of The Indian Divorce Act, 1969. According to the appellant, the marriage between the appellant and the respondent was solemnised on 09.12.2011 at CSI Immanuel Church, Hasthampatty, Salem as per Christian rites and customs. According to the appellant, from the date of marriage, the respondent refused to have conjugal bliss with him, with the result, he was put to mental agony and hardship. It is further stated by the appellant that he was also ill-treated by the respondent and his family members in front of others thereby he was put to shame and degradation. It is the specific case of the appellant that the respondent admitted the atrocities committed by her in the form of a letter dated 18.02.2012 in a note book written by her, Ex.P4, which would indicate that the appellant was subjected to matrimonial cruelty. The respondent, even thereafter, did not change her attitude and therefore, the appellant has filed the IDOP No. 15 of 2012 for dissolution of the marriage solemnised between him and the respondent on 09.12.2011 on the ground of cruelty and non-consummation of the marriage.

4. The Original Petition was resisted by the respondent by filing a counter. According to the respondent, the appellant and the respondent lived happily for seven months and she never refused conjugal bliss to the appellant. While so, after seven months, the appellant left the respondent in her parents house by making her to believe that he will come and take her back to the matrimonial home within a week. However, the appellant did not turn up and when he was contacted, he informed the respondent that he and his family members did not like the respondent and she is not a suitable match for the appellant. According to the respondent, she is always ready and willing to live with the appellant and to that effect, she has also filed IDOP No. 25 of 2012 under Section 32 of The Indian Divorce Act for restitution of the conjugal rights.

5. Before the Family Court, on behalf of the appellant, the appellant examined himself as PW1 and Exs. P1 to P10 were marked on his side. On the side of the respondent, she examined herself as RW1 and Exs. R1 and R2 were marked. The Family Court, upon considering the oral and documentary evidence particularly Ex.P4, and on taking note of the rival submissions, allowed IDOP No. 15 of 2014 filed by the appellant by granting Judicial separation and dismissed the petition in so far as it relates to the prayer for dissolution of marriage. Consequently, the Family Court dismissed IDOP No. 25 of 2012 filed by the respondent for restitution of conjugal rights.

6. Challenging the Order dated 18.11.2014 passed in I.D.O.P. No. 15 of 2012 on the file of Family Judge, Salem, in so far as it relates to the grant of Judicial Separation, instead of dissolution of the marriage, the appellant has filed CMA No. 365 of 2015. Challenging the very same order passed in IDOP No. 15 of 2012 granting Judicial Separation and dismissing IDOP No. 25 of 2012 filed for restitution of conjugal rights, the respondent has filed CMA Nos. 1574 and 2512 of 2017 respectively.

7. The main contention urged on behalf of the appellant is that once the appellant has proved by oral and documentary evidence regarding the cruelty suffered by him at the hands of the respondent, the Court below is bound to grant a decree of divorce instead of granting judicial separation.

8. On the other hand, the learned counsel for the respondent/wife would contend that a cursory perusal of the averments made by the appellant in IDOP No. 15 of 2012 would reveal that they are vague, bald and generic. The appellant has filed the Original Petition without any strong grounds to dissolve the matrimonial tie between the spouse. The Court below failed to consider that the matrimonial dispute alleged by the appellant are not such that it warrants grant of a Judicial Separation, instead the Court below ought to have accepted the plea of the respondent for restitution of conjugal rights. When the appellant failed to prove the allegation that the marriage has not been consummated, the Court below ought to have held that the appellant was not subjected to matrimonial cruelty and consequently, the Original Petition filed by the respondent for restitution of conjugal rights ought to have been allowed.

9. We have heard the counsel for both sides and perused the Common Order dated 18.11.2014 passed by the Family Court, Salem. The appellant has filed a petition in IDOP No. 15 of 2012 on the file of the Family Court, Salem for granting a decree of divorce. Thereafter, the respondent herein has filed a petition in IDOP No. 25 of 2012 for restitution of conjugal

rights. But the trial court, on analysing the evidence, has passed an order of Judicial Separation. Having dealt with the evidence, the Court below ought to have either granted a decree of divorce or refused to dissolve the marriage, instead, the Court below has granted judicial separation, which is not final. Hence, we are of the view that the matter has to be remitted back to the court below for fresh consideration.

10. Accordingly, the Common Order dated 18.11.2014 passed in I.D.O.P. No. 15 and 25 of 2012 on the file of Family Judge, Salem is set aside and the matter is remanded back to the Court below for fresh consideration. The Family Court, Salem is directed to take up I.D.O.P. No. 15 and 25 of 2012 on file and to dispose it of on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

rsh

To

The Family Judge
Salem.

+3cc to Mr.V.Ilanchezhiyan, Advocate, Sr.68230 to 68232 (05/12/17)
+1cc to Mr. R.Karthikeyan, Advocate, S.R.No.67959

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CMA No. 365 of 2015
and

CMA Nos. 1574 & 2512/2017

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