

IN THE HIGH COURT OF JUDICATURE AT MADRASDated : **22.11.2017**

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN**C.M.A.No.398 of 2016**

Balasubramaniam Appellant

Vs.

Valamarthi Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 19 of Family Courts Act, to allow this appeal by setting aside the order dated 18.08.2015 made in H.M.O.P.No.151 of 2014 on the file of the Family Court, Erode and grant a decree of divorce dissolving the marriage between the appellant and the respondent held on 1.3.1987.

For Appellant : Mr.I.C.Vasudevan

For Respondents : Mr.N.Manokaran

JUDGMENT

(Judgement of the Court was delivered by
P.KALAIYARASAN, J)

This Civil Miscellaneous Appeal is directed against the order of the Family Court, Erode, dated 18.08.2015 in H.M.O.P.No.151 of 2014 dismissing the petition for divorce on the ground of cruelty and desertion at the instance of the petitioner / husband as appellant.

2. It is averred in the petition that marriage between the petitioner and the respondent was solemnized as per Hindu rites and customs on 11.03.1987 in Erode and they were blessed with two sons. After 2000, the respondent started abusing the petitioner demanding to transfer the property in her name and the petitioner also settled a terrace house in her name on 17.11.2004. She used to abuse the petitioner in the presence of others as drunkard and impotent. She left the matrimonial home on 10.12.2007 without any reason. Within three days at her instance her father came with muscle men threatened the petitioner to transfer his property to the name of the respondent and they also abducted him and threatened.

3. On 03.03.2008, the petitioner sent a notice to the respondent asking her to come back and live with him. But she sent a reply with false allegations. On 23.05.2009 again the petitioner sent another notice. In the second week of February 2012 the respondent trespassed into a house belonging to the petitioner with sons and occupied. On 03.05.2012, she came with her sons to the house of the petitioner and assaulted him. She also filed suit for maintenance in O.S.No.152 of 2012 and she instigated her sons to file suit for partition in O.S.No.78 of 2012. Both the suits were

disposed of. The respondent filed several false cases against the petitioner and the respondent also deserted the petitioner from 2007. Therefore, the petition for divorce has been filed.

4. The respondent in her counter admits the marriage and the birth of two sons out of the wedlock. She contends that till 2012 both the petitioner and respondent were living together and afterwards the respondent often beat the respondent and drove her away with her children. The petitioner took a loan of Rs.10 lakhs from the parents of the respondent to commence the weaving business. He sustained loss in the business and for that he executed a settlement deed in favour of the respondent. Since the petitioner attacked the respondent with crowbar on her head, she was treated as inpatient in Krishnaveni Hospital. The petitioner having illicit intimacy with another lady treated the respondent cruelly by beating her and her sons. Only the petitioner compelled the respondent to get the properties from her parents as her parents have no male legal heirs. Only after partition suit the respondent has been residing in the present house and before that she was residing with the petitioner in the petitioner's house. On 03.05.2012, the petitioner beat the respondent and their two sons and drove away from the house and a case was also registered in

Cr.No.281 of 2012 in Erode Taluk Police station. Till date the respondent is willing to live with the petitioner and he only treated the respondent cruelly and therefore the petition is to be dismissed.

5. On the side of the petitioner two witnesses were examined and 11 Exhibits marked. On the side of the respondent two witnesses examined. The trial court after analysing the evidence of both sides, dismissed the petition. Aggrieved by the said order, the petitioner / husband preferred this Civil Miscellaneous Appeal.

6. The learned counsel appearing for the appellant argued that the wife deserted the appellant without reasonable cause for more than 7 years; that the respondent committed cruelty by levelling baseless allegations that the appellant / petitioner was leading adulteress life with a Keralite lady and there is also FIR for the attack made on the petitioner and therefore there is evidence in abundance to grant divorce.

7. The learned counsel appearing for the respondent repletedly argued that there is absolutely no evidence that the respondent / wife committed any cruelty and desertion has also not

been established. It is further contended that only the appellant / husband beat his wife and drove her from her matrimonial home and committed cruelty.

8. There is no dispute about the marriage between the appellant and respondent and out of the wedlock two male children were born. Marriage was solemnized in 1987. According to the appellant / husband, the respondent / wife deserted him in 2007. But according to the respondent only after partition suit in 2012, the husband drove her and children from the house on 03.05.2012. The petitioner examined as P.W.1 in his cross-examination says that he was staying in the same house along with his wife and children when the alleged assault was made on him in 2007. The petitioner sent notices to the respondent through lawyer on 03.03.2008 and 28.05.2009 and these exchange of notices are marked as Ex.P.3 and Ex.P.11. From these notices it is discerned that the respondent was away from the petitioner in her parental home due to misunderstanding.

9. In 2011 as admitted by the petitioner during cross-examination, he signed in the nomination paper filed by the respondent to contest in the local body election and therefore, they

came together after the above said exchange of notices. Again the problem started in 2012 leading to filing of partition suit in O.S.No.78 of 2012 by the sons of the petitioner on 14.03.2012 and maintenance suit in O.S.No.152 of 2012 by the respondent on 26.03.2012. The compromise memo was filed in the maintenance suit and as per the compromise, suit for maintenance was dismissed on 01.10.2012. The petition for divorce was filed by the petitioner on 12.03.2013. Therefore from the above discussion it is clear that the petitioner has not established that the respondent deserted the petitioner from 10.03.2007.

10. When the petitioner himself admits that he signed in the nomination paper filed by his wife in 2011, it is to be seen whether there is any cruelty from the side of the respondent as alleged by the petitioner particularly after 2011. Though the petitioner alleges that he was attacked at the instance of the respondent in 2007 he himself says during cross-examination that he has not lodged any complaint; however he admits that her wife was admitted in the hospital and he does not know what for she was admitted. The respondent examined as R.W.1 and her son examined as R.W.2 have deposed that the respondent was assaulted by her husband resulting to hospitalisation for several days.

11. The main allegation of the petitioner is that the respondent abused him and treated him cruelly demanding to transfer the property in her name. The specific case of the respondent is that she never abused her husband and she never demanded to transfer the property in her name. But for the loan obtained by the petitioner from his father-in-law, he settled the property in favour of his wife, the respondent herein. P.W.2 says in his evidence that the petitioner obtained a loan of Rs.10 lakhs from his father-in-law. Therefore, the contention of the respondent that Ex.P.2, Settlement Deed was executed by the petitioner in favour of the respondent only for the reason that he obtained loan of Rs.10 lakhs from her father is acceptable.

12. The business started by the petitioner went in loss. The respondent sought maintenance and sons claimed partition. Due to the demand of maintenance and partition, there was quarrel between the spouses and children on 03.05.2012. The petitioner lodged complaint before the police against his wife and sons with respect to the occurrence on 03.05.2012. The respondent and his son examined as R.W.1 and R.W.2 also say that they also lodged complaint and they were treated in the hospital for the injuries caused by the petitioner. The petitioner as P.W.1 admits during

cross-examination that his wife and sons were admitted in the hospital. Both the partition suit as well as the maintenance suit were disposed of on 27.06.2012 and 01.10.2012 respectively. The above incident where both parties are alleged to have assaulted each other does not lead to conclude that the respondent committed any cruelty.

13. For the aforesaid reasons, the petitioner has not established the grounds taken by him for the divorce. The trial court has rightly dismissed the petition for divorce and there is no reason to interfere with the findings of the trial Court and accordingly, this Civil Miscellaneous Appeal is liable to be dismissed.

14. In fine, this Civil Miscellaneous Appeal is dismissed confirming the order dated 18.08.2015 made in H.M.O.P.No.151 of 2014 on the file of the Family Court, Erode. No costs.

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(A.S., J.) (P.K., J.)

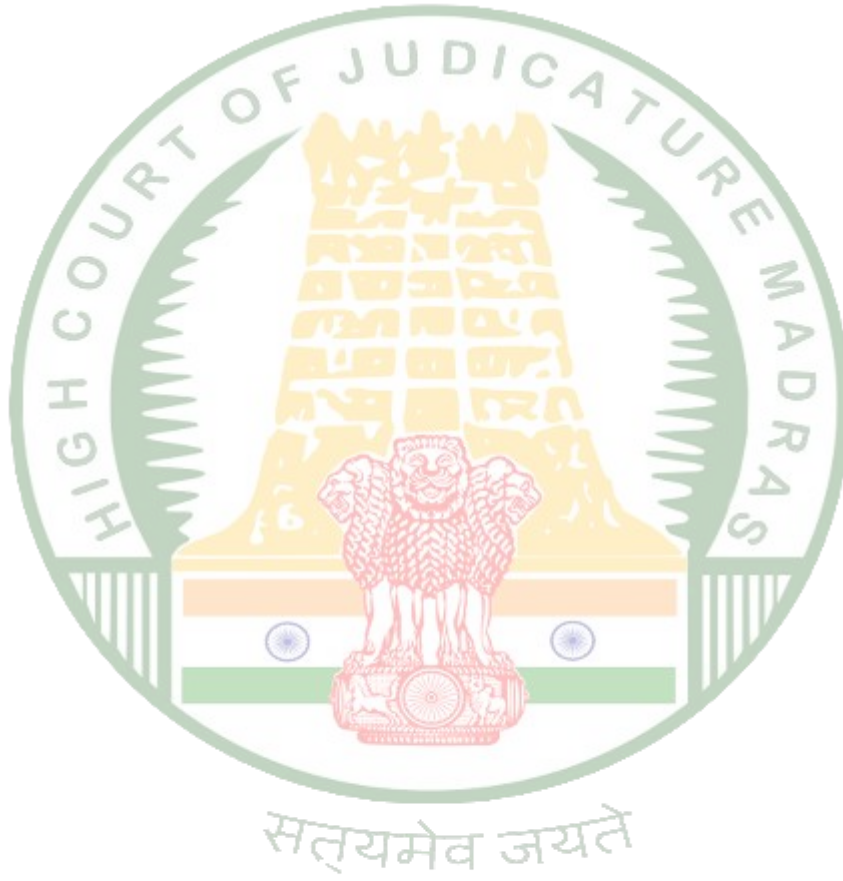
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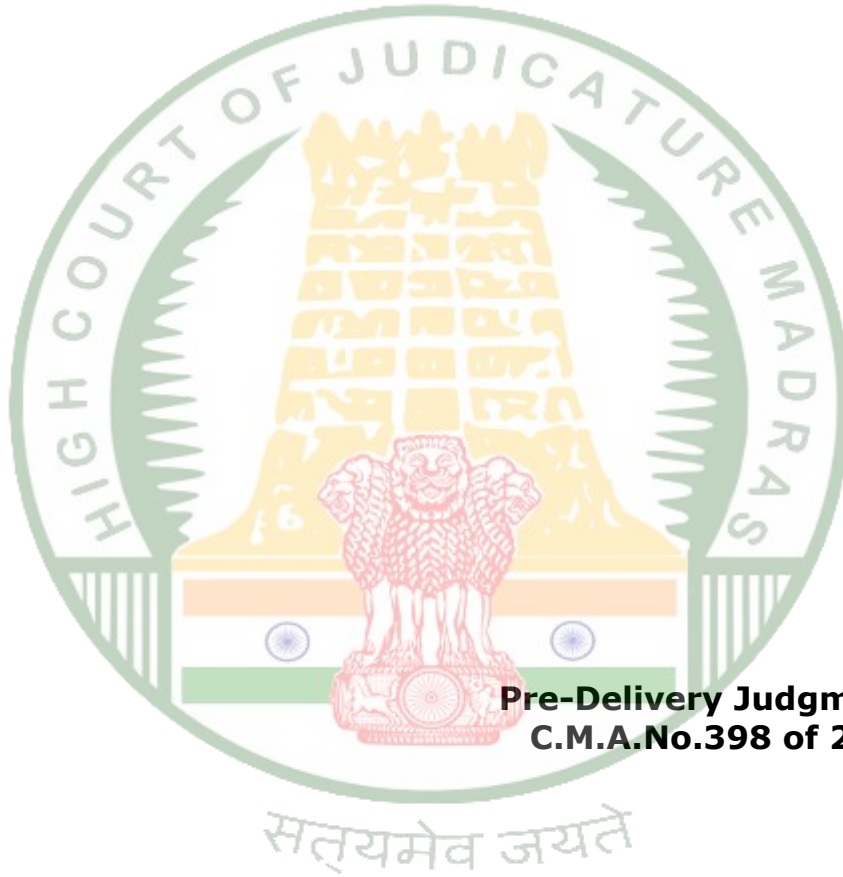
The Family Court,
Erode.



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**A.SELVAM, J.
AND
P.KALAIYARASAN, J.**

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**Pre-Delivery Judgment in
C.M.A.No.398 of 2016**

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