

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 21-11-2017

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.S.A.No.15 OF 2015

Y.Vikram

...

Appellant

-VS-

S.Seethalakshmi

...

Respondent

Appeal against the judgment and decree, dated 19.03.2015, passed in C.M.A.No.6 of 2014, on the file of Principal District Judge, Chengalpattu, against the order, dated 03.04.2014, passed in H.M.O.P.No.336 of 2011 on the file of Subordinate Judge, Tambaram.

For appellant : Mr.V.Kannadasan

For respondent : Mr.S.Gunalan

JUDGMENT

This Civil Miscellaneous Second Appeal is preferred against the reversal of decree of divorce passed by the trial Court.

2. Appellant is the husband and petitioner in divorce petition. According to the appellant, the marriage between the appellant and the respondent was solemnised on 27.08.2010 as per Hindu rights and customs. Respondent was presurising the appellant to set up a separate matrimonial home. Appellant was not willing to leave the aged

parents without any support and, therefore, he politely declined to accept the demand of the respondent. While the matter stood thus, on 11.10.2010, the respondent had consumed rat poison and was admitted in hospital. Respondent's parents have beaten up the parents of the appellant. This has further deteriorated the situation. On 11.10.2010 at around 11.00 p.m., parents of the respondent and her relatives, along with ten rowdy elements, attacked the appellant and his parents mercilessly and also abused them in filthy language. A police complaint was also lodged. After some days, the respondent asked the appellant to return her PAN Card, ATM Card, Cheque Book and educational certificates and, after taking those documents, she left the matrimonial home and permanently stayed with her parents. The appellant, having no other alternative, issued a legal notice on 04.12.2010 for re-union, which was replied with some false allegations. Thereafter, the respondent did not come to the matrimonial home. The appellant was also having fear that bringing her back to the matrimonial home will jeopardize his life further and, therefore, he filed a petition for divorce.

3. The respondent, inter alia, denied all the allegations and would allege that the family members of the appellant abused her family members in filthy language even before marriage. The appellant was never insulted, but, on the other hand, the appellant's uncle only abused the respondent. The incident of attack on the appellant and his parents was all denied as false. She had consumed poison due to the fear

created in her mind by the parents of the appellant. After the intervention of police officials, she agreed to stay in the matrimonial home, but the appellant did not permit her to stay in his house, but, instead, sent her back with PAN Card, ATM Card, Cheque Book and educational certificates. She has not left the house voluntarily, but was chased away from the house. While there were negotiations, mother of the appellant lodged a false complaint with police against her parents and relatives. The allegation of cruelty is false and she is always willing to lead a peaceful matrimonial life in a separate residence, to avoid future problems.

4. Considering the evidence of both sides, the trial Court has found that the respondent was insisting to set up a separate house. Also, considering the acts of the respondent for setting up separate house and the mental torture, the trial Court has come to the conclusion that there is no future chance of re-union and the marriage has irretrievably broken down and, accordingly, decreed the petition, filed by the appellant.

5. On appeal, the lower appellate Court has elaborately discussed the evidence and, relying on the judgment of a Division Bench of this Court in Venkatasubramani v. Sreemathy II (2010) DMC 259 (DB) and also a judgment of the Hon'ble Supreme Court in Savitri Pandey v. Prem Chandra Pandey, (2002) 2 SCC 73, has held that insistence for setting up a separate residence cannot be a ground for

granting divorce. It has further held that it is an ordinary wear and tear of a family life. Therefore, it has decided the matter on the basis of the judgments that Court shall approach the issue to preserve the matrimonial home. On those grounds, the order of the trial Court, dissolving the marriage, was set aside and the appeal filed by the respondent was allowed, against which, the present Civil Miscellaneous Second Appeal is filed.

6. Heard both sides.

7. Learned counsel for the appellant would submit that the conduct of the respondent in insisting to set up a separate matrimonial home without any justifiable reason will amount to torture to the appellant/husband, resulting in the act of cruelty and, more so, living with constant threat of the strange behaviour of the respondent and her suicidal attempts will cause serious consequences in his life. The appellant is not inclined to leave the parents at their old age. It is the bounden duty of the appellant to maintain his parents, to which, the respondent is not willing.

8. On the other hand, learned counsel for the respondent would argue that the sole incident of consuming poison cannot be a ground for divorce and the insistence for setting up a separate home to avoid future complications will not amount to cruelty and, therefore, the lower appellate Court is correct in deciding that the matrimonial relationship shall be preserved.

9. The Hon'ble Supreme Court, in the case of Narendra v. K.Meena, 2016

(9) SCC 455, has observed as under :

"10. With regard to the allegations of cruelty levelled by the Appellant, we are in agreement with the findings of the trial Court. First of all, let us look at the incident with regard to an attempt to commit suicide by the Respondent. Upon perusal of the evidence of the witnesses, the findings arrived at by the trial Court to the effect that the Respondent wife had locked herself in the bathroom and had poured kerosene on herself so as to commit suicide, are not in dispute. Fortunately for the Appellant, because of the noise and disturbance, even the neighbours of the Appellant rushed to help and the door of the bathroom was broken open and the Respondent was saved. Had she been successful in her attempt to commit suicide, then one can foresee the consequences and the plight of the Appellant because in that event the Appellant would have been put to immense difficulties because of the legal provisions.

11. We feel that there was no fault on the part of the Appellant nor was there any reason for the Respondent wife to make an attempt to commit suicide. No husband would ever be comfortable with or tolerate such an act by his wife and if the wife succeeds in committing suicide, then one can imagine how a poor husband would get entangled into the clutches of law, which would virtually ruin his sanity, peace of mind, career and probably his entire life. The mere idea with regard to facing legal consequences would put a husband under tremendous stress. The thought itself is distressing. Such a mental cruelty could not have been taken lightly by the High Court. In our opinion, only this one event was sufficient for the Appellant husband to get a decree of divorce on the ground of cruelty. It is needless to add that such threats or acts constitute cruelty. Our aforesaid view is fortified by a decision of this Court in the case of Pankaj Mahajan v. Dimple @ Kajal (2011) 12 SCC 1, wherein it has been held that giving repeated threats to commit suicide amounts to cruelty.

12. The Respondent wife wanted the Appellant to get separated from his family. The evidence shows that the family was virtually maintained from the income of the Appellant husband. It is

not a common practice or desirable culture for a Hindu son in India to get separated from the parents upon getting married at the instance of the wife, especially when the son is the only earning member in the family. A son, brought up and given education by his parents, has a moral and legal obligation to take care and maintain the parents, when they become old and when they have either no income or have a meagre income. In India, generally people do not subscribe to the western thought, where, upon getting married or attaining majority, the son gets separated from the family. In normal circumstances, a wife is expected to be with the family of the husband after the marriage. She becomes integral to and forms part of the family of the husband and normally without any justifiable strong reason, she would never insist that her husband should get separated from the family and live only with her."

10. The plight of the husband is that if the wife succeeds in committing suicide, the life of the husband will virtually ruin his sanity, peace of mind, career and probably his entire life. He would be put under tremendous stress. Such a mental cruelty should not be taken lightly by the High Court. The attempt to commit suicide and threats or acts will constitute cruelty.

11. During the course of arguments, this Court has directed the parties to undergo mediation, which they have undergone. In spite of negotiations, mediation could not succeed. The husband is not willing to leave his parents and the wife is not willing to live in the joint family. Considering the facts and circumstances of the case and the separation between the husband and the wife for the past seven years, an attempt has been made by this Court to patch up the marital relationship between the

parties. However, when the parties are very stubborn in their stands with respect to the joint family and separate home, there is no further meaning in persuading the parties. As held by the Hon'ble Supreme Court in Narendra's case, cited above, in a Hindu society, it is the pious obligation of son to maintain his parents and persistent efforts of the respondent wife to constrain appellant to be separated from his family without any justifiable reason, merely for some monetary consideration, would be torturous to husband, constituting act of cruelty. Further, as observed above, even though it is an isolated attempt of attempting to commit suicide, if wife succeeds in her attempt, as observed by the Hon'ble Supreme Court, husband will be entangled into clutches of law, which would virtually ruin his sanity, peace of mind, career and probably his entire life and consequences will certainly lead him to tremendous stress and mental torture, which amount to cruelty. The said view was also fortified by a decision of the Hon'ble Supreme Court in Pankaj Mahajan v. Dimple, 2011 (12) SCC 1.

12. In such circumstances, considering the present situation, this Court is of the view that the acts of the respondent amount to cruelty and there is no scope for re-union, as the marriage has irretrievably broken down. As such, the decree of divorce granted by the Subordinate Court, Tambaram, in H.M.O.P.No.336 of 2011 is restored, setting aside the judgment and decree passed by the Principal District Court, Chengalpattu, in C.M.A.No.6 of 2014.

13. Civil Miscellaneous Second Appeal is allowed. No costs.

Consequently, the connected M.P.No.1 of 2015 is closed.

Index : Yes/No

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Internet : Yes/No

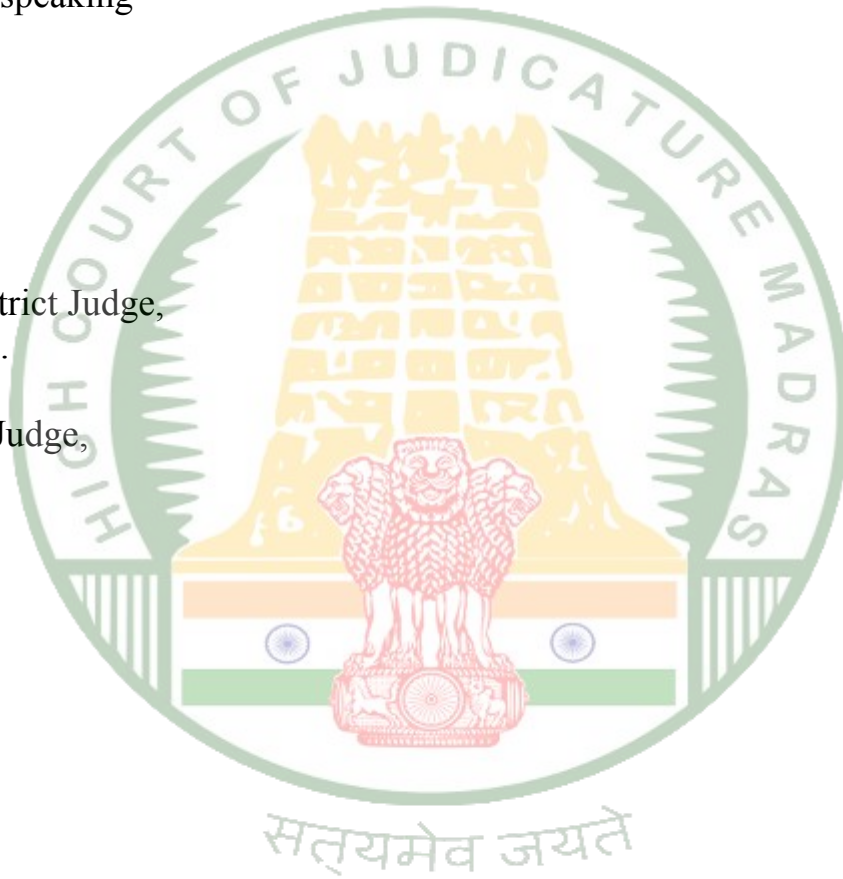
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To

1.Principal District Judge,
Chengalpattu.

2.Subordinate Judge,
Tambaram.



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M.GOVINDARAJ,J.

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