

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.Nos.3305 and 3319 of 2014

and

M.P.Nos.1 and 1 of 2014

S.Manohar ... Appellant in both the CMAs

Vs.

M.Vijayalakshmi alias Renuka
W/o S.Manohar ... Respondent in CMA.No.3305/14

M.Vijayalakshmi
W/o Manohar ... Respondent in CMA No.3319/14

Common Prayer:- Civil Miscellaneous Appeals filed under Section 19 of the Family Court Act, 1984, to set aside the common order passed in OP.Nos.2959 and 2127 of 2010, on the file of the III Additional Principal Judge, Family Court, Chennai, dated 31.07.2014.

(In Both the CMAs)
For Appellant : Mr.S.Venkatesan

For Respondent : Mr.J.Thilagaraj

COMMON JUDGMENT

[Judgment of the Court was delivered by M.V.MURALIDARAN,J.]

Both the CMAs are filed by the husband as against the common order dated 31.07.2014 made in O.P.No.2127 of 2010 and O.P.No.2959 of 2010. In so far as C.M.A.No.3305 of 2014 is concerned it is filed against the order passed in O.P.No.2959 of 2010 allowing the petition filed by the respondent/wife seeking the Restitution of Conjugal Rights and C.M.A.No.3319 of 2014 is filed against the order of dismissal passed in O.P.No.2127 of 2010 filed by the petitioner/husband. Since the above CMAs are filed as against the common order, the same are heard together and a common order is passed here under.

2.The case of the appellant is that he and respondent herein are acquaintance to each other. He married the respondent out of coercion and force on 28.02.2001 and the same was registered under Hindu Marriage Act before the Office of the District Registrar, Chennai North. After the marriage both of them went to their respective parent's house and the marriage was not even consummated between the petitioner and the respondent. The respondent is living separately in a hostel, but she never chose to live with the petitioner and thereby she willfully and deliberately dissented the appellant herein. Though there were several differences between the appellant and the respondent, but all the efforts taken by the appellant to sort out the same ended in vain. Since the respondent failed to join with the appellant and therefore the marriage solemnized between them has irretrievably break down. As there is no possibility of reunion, the appellant sent a lawyer notice dated 12.06.2010 to the respondent and the same was returned. Hence the appellant filed the petition for divorce to dissolve the marriage held between them on 28.08.2001 under Section 13 (1) (i-a) and (i-b) of the Hindu Marriage Act, 1955.

3.The respondent herein filed counter affidavit and denied the entire allegation leveled against her by the appellant-husband. The respondent also filed O.P.No.2959 of 2010 for Restitution of Conjugal Rights. The respondent denied that she forced and compelled the appellant herein for a registered marriage and she denied that they never lived as husband and wife and the marriage was not consummated. She further denied that she deserted the appellant and the marriage has been irretrievably broken. She never received any lawyer notice as alleged by the appellant herein. According to the respondent, in the year 1999 she had the acquaintance of the appellant as a friend and at that time he was working as a Managing Director of Yes Vee Brothers. As per the request of the appellant, she joined in the said Yes Vee Brothers as a clerk in the year 2000. Thereafter the appellant proposed his love to the respondent which was reluctantly accepted by her since both of afraid to disclose their love with their parents, therefore their marriage was registered on 28.02.2001 before the Marriage Registrar, Chennai North. Their marriage was consummated. In fact, the appellant got a leased house at Anna Nagar, Chennai where they lived as husband & wife from 09.07.2009 to November 2009. Thereafter the said rented house at Anna Nagar was kept under lock and key by the appellant herein. The respondent is still having the same love and affection for the appellant in spite of his heaping fabricated, imaginary and loathsome allegation against the respondent herein. The respondent hailed from a respectable educated family and she is an Assistant Professor and Deputy Head of the Department in reputed college. She is the legally wedded wife of the appellant herein and she has unassailable right to live with the appellant. Hence she prayed to allow the petition for Restitution of Conjugal Rights filed by her.

4.The appellant husband filed a detailed counter to the Restitution of Conjugal Rights petition filed by the wife and denied all the allegations made therein against him. Before the Family Court on the side of the appellant he examined himself as PW1 and marked Ex-P1 and P2. On the side of the respondent-wife she was examined as RW1 and Ex R1-R3 were marked on her side. The Learned Judge upon considering the oral and documentary evidence adduced on either side was pleased to dismiss the divorce petition filed by the husband in O.P.No.2127 of 2010 and allowed the O.P.No.2959 of 2010 filed by the wife for Restitution of Conjugal Rights by common order dated 31.07.2014. Being aggrieved over the dismissal of divorce petition and allowing the Restitution of Conjugal Rights petition the husband is before this court by way of the above two C.M.As.

5.We have heard Mr.S.Venkatesan, learned counsel for the appellant and Mr.J.Thilagaraj, learned counsel for the respondent in both the Civil Miscellaneous Appeals and perused the entire material available on records.

6.The Learned Counsel for the appellant would contend that there is no consummation of marriage between the appellant and the respondent. It is the specific case of the appellant to substantiate his case on the ground of cruelty was that the respondent failed to discharge the marital obligations and refused to consummate the marriage which amount to cruelty and therefore the Learned Judge ought to have granted divorce. When a specific question was put to the respondent about the consummation of marriage she answered that there was a consummation, but beyond that when specific questions were asked regarding the place of consummation etc, she was not able to answer the same only go to prove that the statement of the respondent that there was consummation of marriage was blatant lie. However, the Learned Judge erroneously held that the frequent visit by the appellant to the respondent's place in the year 2009 would presume that there has been consummation of marriage and they were living together as husband and wife. The said finding of the family court is liable to be set aside.

7.Further the respondent herein deserted the appellant from 2009 onwards and both of them are living separately for the past 8 years. The non-consummation of marriage amounts to cruelty which affects the mental health of the husband and wife. Therefore the appellant is entitled for divorce on the ground of desertion. The Learned Judge ought to have dismissed the petition for Restitution of Conjugal Rites filed by the wife.

8.The Learned Counsel for the appellant has relied on an unreported Judgment of the Hon'ble Apex Court in the case of K.Srinivas Rao -Vs- D.A.Deepa made in Civil Appeal No.1794 of 2013 wherein it is held that

"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 through 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 feeling and emotions of the parties. In such like situations, it may lead to mental cruelty. It is pertinent to note that in this case the husband and wife had lived separately for more than sixteen and a half years. This fact was taken into consideration along with other facts as leading to the conclusion that matrimonial bond had been ruptured beyond repair because of the mental cruelty caused by the wife. Similar view was taken in Naveen Kohli".

9.The facts and circumstances of the case referred in the above judgment is entirely different from the facts of the case on hand and therefore the above judgment relied on by the learned counsel for the appellant will have no application to the present case.

10.The Learned Counsel for the respondent would submit that the appellant filed the divorce petition on two grounds namely cruelty and desertion. Initially the petition was filed under Section 13(1) (i-b) for divorce on the ground of desertion. At a latter point of time, an amendment petition was filed by the husband by including the ground of cruelty. But no ground for cruelty is stated in the petition. The allegations regarding desertion are shown vague. The Learned Judge has rightly held that there is no denial of marriage by the husband. Further the Learned Judge has rightly held that the pleadings of the appellant are contrary to each other and therefore the Learned Counsel for the respondent prays to dismiss the above appeals.

11.We have carefully gone through the oral and documentary evidence adduced by the parties and also carefully considered the judgment of the Family Court. The Learned Judge has elaborately dealt with the issue and ultimately come to the conclusion that there is a consummation of marriage between the appellant and the respondent and further held that the question of cruelty does not arise, since the wife has not deserted the husband as alleged by the husband. The appellant and the respondent have lead the marital life very happily and they were resided in a rental house at Anna Nagar, Chennai and

they exchanged greeting cards and the appellant has bought jewels for his wife, the respondent herein which could be clingly proved from the documents marked on the side of the respondent under Ex- R3-R9. A bare reading of the entire judgment of the Family Court would disclose that the ground of cruelty attributed by the husband against his wife has not been proved. Further there is ample evidence to show that the marriage is consummated and therefore the argument of the learned counsel for the appellant herein that the marriage is not consummated is unbelievable and the same can't be accepted.

12. At this juncture, this Court in view of the above fact do not find any fault with the Learned Trial Judge's view that there is no mental and physical cruelty by the respondent-wife and as such the matrimonial bond is not irretrievably broke down. Again this Court is not in a position to differ with the view of the Learned Judge that there is no desertion by the respondent-wife as alleged by the appellant / husband.

13. Therefore this Court concludes that the impugned order herein do not suffer from any illegality or infirmity in holding that the appellant herein has not established his case for dissolution of marriage with the respondent appellant on the grounds of cruelty and desertion and thus the Learned Judge by dismissing the appellant's petition in O.P.No.2127 of 2010 filed for dissolution of marriage, had rightly in consequence allowed the Respondent's O.P.2959 of 2010 for Restitution of Conjugal Rights.

14. In view of the foregoing reason, the well considered judgment of the Learned II Additional Family Court Judge, Chennai does not call for any interference by us and there is no irregularity and infirmity attached to the said judgment. Hence the appeals fails and the same are dismissed. There is no order as to cost. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vs

To

1.The III Additiona Principal Judge,
The Additional Family Court,
Chennai.

Copy to: The Section Officer,
V.R.Section, High Court,
Madras-104.

+ 2 ccs to MR. A. Ganesh, Advocate Sr.81975, 81926

C.M.A.Nos.3305 and 3319 of 2014
and
M.P.Nos.1 and 1 of 2014

SSD(CO)
EU(14/03/2018)



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