

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:06.11.2017
CORAM

THE HON'BLE Mr.JUSTICE A.SELVAM
and
THE HON'BLE Mr.JUSTICE P.KALAIYARASAN

C.M.A.No.978 of 2017
and C.M.P.No.4862 of 2017

R.Rinu ..Appellant/Respondent

Vs

S.Sanjay ...Respondent/Petitioner

Civil Miscellaneous Appeal preferred against the order dated 18.04.2016 made in H.M.O.P.No.1096 of 2010, on the file of the Principal Family Court, Coimbatore.

For Appellant : Ms.R.Meenal
For Respondent : Mr.L.Mouli

J U D G M E N T

[Judgment of the Court was delivered by A.SELVAM, J.]

This Civil Miscellaneous Appeal has been directed against the order dated 18.04.2016, passed in H.M.O.P.No.1096 of 2010, by the Principal Family Court, Coimbatore.

2.The respondent herein, as petitioner, has filed H.M.O.P.No.1096 of 2010, on the file of the trial Court under Sections 13[1][i-a] of the Hindu Marriage Act, 1955, praying to dissolve the marriage between him and respondent held on 24.06.2009.

3.It is averred in the petition that the petitioner has married the respondent on 24.06.2009 and reception of marriage has taken place on 28.06.2009 at Sri Annapurna Hotel, R.S.Puram, Coimbatore. After a short span of marriage, the respondent has shown her indifferent attitude towards the petitioner. On so many occasions, she used to raise tantrum and very often, she used to say that she is going to settle at ashram and on 19.04.2010, the respondent has delivered a female baby at Ganga Hospital, Coimbatore and subsequently, she left the child abruptly under the care and custody of the petitioner and left matrimonial home on 10.09.2009. The elders and family members of the petitioner have tried their level best to bring the respondent to marital abode, but all their attempts have become

futile. Since the respondent has caused mental cruelty to the petitioner, the present petition has been filed for getting the relief sought therein.

4. In the counter filed on the side of the respondent, it is averred to the effect that most of the averments made in the petition are false. It is true that the marriage between the respondent and petitioner has been performed on 24.06.2009, but it is false to aver that the respondent has used to raise tantrum on so many occasions. It is also false to aver that the respondent has used to threaten the petitioner by way of saying that she is going to settle at ashram. The respondent has given birth to a female child on 19.04.2010. The petitioner has deserted the respondent without sufficient cause and despite of repeated efforts made on the side of the respondent, the petitioner has not admitted her in marital abode and there is no merit in the petition and the same deserves to be dismissed.

5. On the basis of the rival evidence available on record, the trial Court, has given a specific finding to the effect that the conduct of the respondent would cause continuous mental cruelty to the petitioner and consequently, the marriage between the petitioner and respondent is dissolved by way of passing the impugned order and the same is being challenged in the present Civil Miscellaneous Appeal.

6. The learned counsel appearing for the appellant/respondent has contended to the effect that the present petition has been filed mainly on the ground of alleged mental cruelty caused by the respondent to the petitioner and on the side of the petitioner, absolutely there is no evidence for the purpose of proving the alleged mental cruelty. The trial Court, without considering lack of evidence on the side of the petitioner, has erroneously allowed the petition and therefore, the order passed by the trial Court is liable to be set aside.

7. Per contra, the learned counsel appearing for the respondent/petitioner has contended that the respondent/petitioner has married the appellant/respondent on 24.06.2009. After marriage, only for a short period, both of them have lived happily and subsequently, the respondent has created so many problems and very often, she used to threaten the petitioner by way of saying that she would settle at ashram and so many elders and family members have tried their level best to bring the respondent to marital abode and all their attempts have become futile and in the meanwhile on 19.04.2010, she delivered a female baby at Ganga Hospital, Coimbatore and at the age of four months of female baby, the respondent left her abruptly under the care and custody of the petitioner and since then, the respondent has not turned up and thereby, caused

mental cruelty to the petitioner and to that effect, a replete evidence is available on the side of the petitioner and the trial Court, after considering the over all evidence available on record, has rightly allowed the petition and therefore, the order passed by the trial Court does not call for any interference.

8. Before admitting the rival contentions put forth on either side, the Court has to narrate the following admitted facts:

It is an admitted fact that the petitioner has married the respondent on 24.06.2009 as per Hindu Rites and Custom. It is also equally an admitted fact that on 19.04.2010, the respondent has delivered a female child.

9. The main contention put forth on the side of the petitioner is that after marriage, both of them have lived happily for a short period and subsequently, the respondent used to raise tantrum even without sufficient cause and on so many occasions, she left marital abode and on 19.04.2010, she delivered a female child and at the age of four months of the said child, the respondent left the marital abode abruptly and since then, she did not turned up and thereby, caused mental cruelty to the petitioner.

10. It is seen from the records that from 10.09.2009, both the petitioner and respondent are living separately. Further, ample evidence is available on the side of the petitioner to the effect that after delivery of a female child and after a period of four months, the respondent has left the marital abode and since then, she has not turned up.

11. Considering the fact that the respondent has left her child at its age of four months and subsequently, she has not come to matrimonial home, this Court is of the view that the respondent has caused mental cruelty to the petitioner. Further, the respondent has not even care to see her child and now the child has attained the age of seven years.

12. Considering the overall circumstances mentioned supra, this is a fit case for dissolving the marriage held on 24.06.2009.

13. The trial Court, after considering the available evidence on record, has rightly passed a decree of divorce. In view of the discussion made earlier, this Court does not find any error or illegality and altogether the present Civil Miscellaneous Appeal is dismissed.

In fine, this Civil Miscellaneous Appeal is dismissed with out cost. The order dated 18.04.2016, passed in H.M.O.P.No.1096 of 2010, by the Principal Family Court, Coimbatore is confirmed. Connected Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

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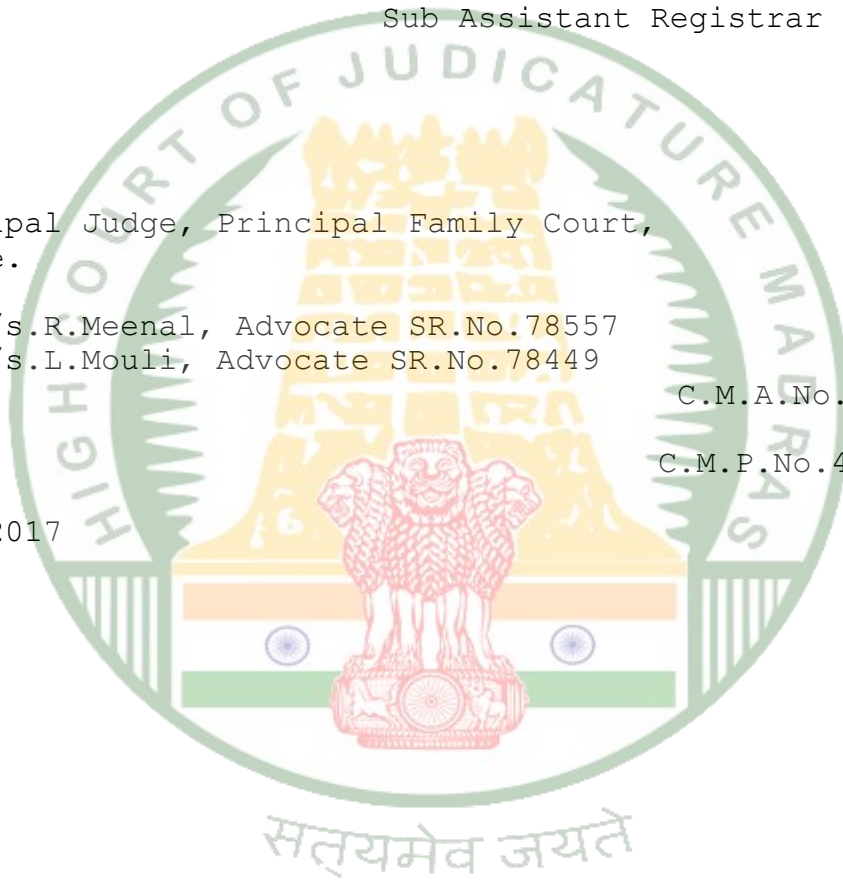
To
The Principal Judge, Principal Family Court,
Coimbatore.

+1cc to M/s.R.Meenal, Advocate SR.No.78557

+1cc to M/s.L.Mouli, Advocate SR.No.78449

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RR(CO)
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