

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2017

CORAM:

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

C.M.A.Nos.1018 and 1936 of 2013
and

M.P.Nos.1, 1 and 2 of 2013

CMA.No.1018 of 2013
Sujatha

... Petitioner

Vs.

R.Muralidharan

... Respondent

Prayer:- Civil Miscellaneous Appeal filed under Section 28(4) of the Hindu Marriage Act, 1955, against the Judgment and Decree dated 08.08.2012 made in H.M.O.P.No.879 of 2008 on the file of the Family Court, Coimbatore.

CMA.No.1936 of 2013

R.Muralidharan

... Petitioner/Appellant

Vs.

Sujatha

... Respondent/Respondent

Prayer:- Civil Miscellaneous Appeal filed under Section 19 of Family Courts Act, 1984, against the Judgment dated 08.08.2012 in H.M.O.P.No.879 of 2008 passed by the Family Court, Coimbatore, in respect of order relating to permanent alimony alone.

For Appellant : Mr.N.Manokaran
(Appellant in CMA.No.1018/13)
(Respondent in CMA.No.1936/13)

For Respondent : Mr.A.S.Balaji
(Respondent in CMA.No.1018/13)
(Appellant in CMA.No.1936/13)

COMMON JUDGMENT

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

Both these Civil Miscellaneous Appeals arising out of Judgment and Decree made in H.M.O.P.No.879 of 2008 dated 08.08.2012 on the file of the Family Court, Coimbatore. The husband and wife aggrieved over the judgment made in H.M.O.P.No.879 of 2008 are before this Court by way of these Appeals. Hence both the appeals are heard together and common Judgment is passed hereunder.

2.In so far as C.M.A.No.1936 of 2013 is concerned it is filed by the husband questioning life time maintenance amount of Rs.7 Lakhs awarded by the Family Court, Coimbatore. As against the divorce granted by the Family Court, Coimbatore the wife has filed C.M.A.No.1018 of 2013. For the sake of convenient, the husband is referred as 'Respondent' and the wife is referred as 'Appellant' throughout this judgment.

3.According to the respondent-husband, the marriage between him and the appellant namely Sujatha was solemnized on 19.10.2001 at Palpulli of Palakadu with the blessings of parents and elders. After the marriage they happily started their matrimonial life at Coimbatore and out of the said wedlock they were blessed with a female child by name Athira on 15.08.2002. Their matrimonial life was happy and peaceful for some time. Thereafter several disputes arose when the respondent wife insisted to permit her to go for a Nursing job, as she had 7 years experience in nursing prior to her marriage. Her request was rejected by the husband stating that at the time of marriage itself an assurance was given by the wife that she will not go for nursing job in future after the marriage. Whereas, contrarily thereafter their marriage she was adamant to secure an employment. Further she threatened that if she was not allowed to go for employment she will commit suicide.

4.In view of the above said statement of the appellant herein, the respondent herein and his parents lived in fear of false accusation. All the neighbours, relatives and friends very well knew about the alarming incidents and mental and physical harassment made to the respondent-husband and his parents in their home. As such once the appellant also attempted for suicide by pouring kerosene on her body, fortunately she was saved by respondent and his parents. On the next day of the said incident, when the husband opened the Bureau, where he saw a letter written by his wife mentioning various allegations on him with a word finishing that she goes to commit suicide on

30.03.2006 (The suicide note letters were marked as Ex-P4 & Ex-P5).

5. Whereupon, after some time the appellant-wife on 02.04.2006 without any valid reason deserted the appellant herein and gone to her parental house and lived there continuously till date. All the efforts taken by the respondent herein and his parents to amicably settle the issue ended in futile. Therefore, without any other option the respondent herein filed divorce petition in H.M.O.P.No.879 of 2008 before the Family Court at Coimbatore.

6. The appellant herein vehemently contended the divorce petition filed by her husband contending that at no point of time she attempted to commit suicide and such averment is an utter false. It is also equally false to state that all the neighbors, relatives and friends had known about the alleged incident of suicide.

7. In so far as the alleged Suicide Note said to have been written by the appellant, the appellant contends that she never written the words as alleged by her husband in the letter dated 30.03.2006 that she would commit suicide making her husband and in-laws are held liable for same. The other letter dated 03.03.2006 and the averments stated therein as alleged by her husband is also absolutely false.

8. Originally the appellant's in-laws would always trouble her by demanding more jewels and money from her parents. It is the case of the appellant is that she was thrown out on 03.03.2006 by the respondent and his family and she has been at the mercy of her brothers and parents. The respondent himself has driven out the appellant herein, by various sort of mental and physical cruelties hence she prayed for dismissal of the divorce petition.

9. The Learned Family Court Judge after considering the oral and documentary evidence adduced by the parties holding that the wife caused cruelty to the husband and therefore by Judgment and Decree dated 08.08.2012 granted divorce by dissolving the marriage solemnized between the appellant and the respondent dated 19.10.2001.

10. That apart the Learned Judge also awarded a sum of Rs.7 lakhs towards permanent alimony to the Appellant wife.

11. Being aggrieved by the judgment and decree of divorce, the appellant-wife has filed C.M.A.No.1018 of 2013. Being aggrieved by the order of permanent alimony, the respondent-husband has filed C.M.A.No.1936 of 2013.

12. We heard Mr.N.Manokaran, learned counsel for the appellant in CMA.No.1018 of 2013 and respondent in CMA.No.1936 of 2013 and Mr.A.S.Balaji, learned counsel for the respondent in CMA.No.1018 of 2013 and appellant in CMA.No.1936 of 2013 and the entire materials available on records are perused.

13. The learned Counsel appearing for the appellant-wife submitted that the trial Court had committed a grave error in granting the decree of divorce in favour of the respondent-husband. The learned Counsel submitted that there was no reason to believe that there was cruelty on the part of the appellant-wife. The Learned Judge has granted the decree of divorce only on the basis of Ex-P4 and P5 letters which cannot be the decisive factor to decide the matrimonial dispute between Parties. Further Ex-P4 and P5 have not been proved in the manner known to law in view of specific denial of certain words written by somebody appeared in the said letters by the wife. The above said fact has not at all considered by the Learned trial Judge. The Learned Counsel for the appellant would further submit that the Learned Family Court Judge has failed to take note of the fact that except the evidence of PW-1 (husband) absolutely there is no material before the Court to prove the desertion. As per the law laid down by the Hon'ble Apex Court in 2002 (1) MLJ (SC) 1, desertion means the intentional permanent for asking and abandonment for one spouse by the other without the others consent and without reasonable cause.

14. Further regarding the allegation of attempting to commit suicide by the wife, the respondent-husband has not proved the same by examining any other independent witness. In this regard the respondent-husband, except himself no other witness was examined. The Learned Family Court Judge failed to consider that the marriage has not been irretrievably broken down and the parties have not reached the stage of chance for re-union.

15. The Learned Counsel appearing for the respondent-husband submitted that the facts recorded by the Learned Family Court Judge after appreciating the evidence were sufficient to show that the respondent was entitled to a decree of divorce as per the provisions of Section 13(1) a of the Hindu Marriage Act. It

is further contented that the appellant-wife had admitted in her cross examination that she does not require permanent alimony and it is enough if she gets monthly maintenance. Further the respondent-husband has been paying a sum of Rs.2,700/- towards monthly maintenance to his wife and child from 2009 onwards in pursuance of the order passed by the Family Court at Palakkad. In spite of the same the Learned Family Court Judge has ordered permanent alimony of Rs.7 lakhs to the wife is total non application of mind, therefore the said order is liable to be set aside.

16.We have carefully gone through the entire records including the evidence of the parties. The Family Court came to the conclusion that there was cruelty meted out to the respondent- husband, we are not in full agreement with the finding of the trial Court. Now, let us look into the allegation by the husband with regard to an attempt to commit suicide by the wife. In this regard the respondent- husband as PW-1 adduced evidence stating that his wife poured kerosene on her body outside house of the husband which was witnessed by the neighbors and relatives. But he has not mentioned date of alleged occurrence said to have taken place.

17.According to PW-1 the allegation regarding attempt to commit suicide by pouring kerosene was taken place outside the house and the same was witnessed by the neighbors. But in order to prove the same no independent witness was examined by the husband. Therefore we have to necessarily hold that there was no such alleged suicide taken place and the same was mentioned only for the purpose of filing divorce petition. Further regarding P4 and P5 letter there are certain other hand witnesses which are not that of the wife. Therefore the duty is caused upon the respondent-husband to prove the signature contained in Ex-P4 and P5 letters is one and the same as that of his wife. But no such steps were taken by the husband, therefore we feel that there was no fault of the part of the appellant-wife and there was no reason for the appellant-wife to make an attempt to commit suicide. Therefore, there is no mental cruelty to the husband by the wife and the finding regarding by the Family Court is not acceptable one.

18.Taking on over all view of the entire evidence and the Judgment delivered by the trial Court, we firmly believe that there is a need to take a different view than that one taken by the Family Court. The behavior of the appellant-wife appears to be genuine and not horrible. It is also not in dispute that the appellant- wife had left the matrimonial home to her parents' house, but it was due to pressure meted out by her in the

matrimonial home. Therefore it cannot be held that the desertion by the wife is willful and intentional one.

19.It is to be pointed out that now a day the income of the husband alone is not sufficient to meet out the day today family expenses since the cost of living is alarmingly increasing every day. Therefore nothing wrong in going for employment by the wife and in fact which would help the family to run smoothly without incurring any debt. Therefore, in the considered opinion of this Court, the wife requesting the husband to permit her to go for nursing employment is not at all a ground for seeking divorce.

20.In view of the above discussion, the order of divorce granted by the Family Court in HMOP.No.879 of 2008 is liable to be set aside and accordingly, set aside and the permanent alimony ordered in HMOP.No.879 of 2008 is also set aside.

21.In the result, both the appeals in C.M.A.No.1018 of 2013 and C.M.A.No.1936 of 2013 are allowed. No cost. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

vs
To

1.The Family Court Judge
Coimbatore.

2.The Section Officer,
V.R.Section, High Court,
Madras-104.

+2 Ccs to M/s. N. Manoharan, Advocate sr 84292, 84293.
+1 CC to M/s. A.S. Balaji, Advocate sr 84270.

C.M.A.Nos.1018 and 1936 of 2013
and
M.P.Nos.1, 1 and 2 of 2013

CNR(CO)
SP(12/02/2018)