

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 04.01.2017

JUDGMENT PRONOUNCED ON : 15.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.M.A.NO.1999 OF 2010
AND M.P.NO.1 OF 2010 &
CROS.OBJ.NO.53 OF 2012

CMA.No.1999 of 2010 :
N.Premalatha

... Appellant/Respondent

Vs.

P.M.Murali

.. Respondent/Petitioner

Cros.Obj.No.53 of 2012
P.M.Murali

.. Cross Objector

Vs.

N.Premalatha

.. Respondent

Prayer in CMA.No.1999 of 2010 : Civil Miscellaneous Appeal filed under Section 19 of the Family Court's Act, 1984, to set aside the judgment and decree dated 02.09.2009 made in FCOP.No.1564 of 2003 on the file of II Additional Family Court at Madras.

Prayer in Cros.Obj.No.53 of 2012 : Cross Objection filed under Order 41 Rule 22 of CPC, to set aside the judgment and decree dated 02.09.2009 in O.P.No.1564 of 2003 on the file of II Additional Family Court at Chennai in so far as the ground of cruelty is concerned and allow the petition in O.P.No.1564 of 2003 on the ground of cruelty also with costs.

In CMA.No.1999 of 2010:

For Appellant : Ms.K.Sumathi

For Respondent : Mr.J.Saravana Vel

In Cros.Obj.No.53 of 2012:

For Cross Objector : Mr.J.Saravana Vel

For Respondent : Ms.K.Sumathi

JUDGMENT

[Judgment delivered by N.SESHASAYEE, J.,]

1. This appeal and the cross objection spring from a spousal difference that has assumed litigious proportions within about three years of their marriage. For the sake of narrative convenience parties would be termed as appellant/wife and respondent/husband in this judgment.

2. The respondent/husband has filed a petition in O.P.No.1564 of 2003 on the file of II Additional Family Court, Chennai, seeking dissolution of marriage with his wife on the grounds of cruelty and desertion. The trial Court granted a decree dissolving the marriage on the ground of desertion but not on grounds of cruelty. Disappointed over the decree passed, the wife has preferred this appeal. The respondent/husband too has felt aggrieved despite obtaining a decree for divorce and has preferred a cross objection, perhaps with an objective to reinforce the decree he had obtained.

3. The material facts alleged in the petition which are relevant for the present purpose are bullet-pointed as below:

- The marriage between the parties took place on 09.3.2000. The marriage however, was not consummated nor was allowed to be consummated by the appellant/wife. The wife imposed a precondition that should the marriage be consummated, the husband should join her to live with her in her mother's apartment at Thousand Lights locality in Chennai. The petitioner however, had to care his aged and ailing parents at Virugambakkam.
- The appellant/wife has always been abusive, cruel and displayed a repulsive behaviour and attitude. She would often threaten the petitioner and his family that she would go public with false rumors and disgraceful remarks about them and put them to considerable embarrassment.
- The appellant-wife was working in the Veterinary College, Vepery, but she would hardly return home on time, and would choose to stay with her mother for days together without intimating it to her husband. Needless to mention that it put the respondent and his family to considerable mental

torture. As days passed by, the attitude of the appellant/wife worsened that she would phone up his higher officials and told them that he was impotent and hence she was not living with him, that her parents-in-law and his husband's siblings were dowry-mongers. On 19.6.2001, she held out a threat telephonically that should the respondent refuse to stay with her in her mother's house, she would foist a dowry-demand case and implicate him and his family members. When the petitioner found it unbearable, he preferred a complaint with Virukambakkam Police and Koyambedu Police on 25.6.2003.

- The respondent-husband attempted to take a house on rent quite a few times, proximate to the work place of his wife, but she would refuse to live with him, but kept insisting that the appellant/husband should join her at her mother's place. The appellant is frigid and hardly exhibited a conduct befitting an affectionate wife. The respondent undertook numerous efforts himself and through his relatives to mend the strain that come to define his marital relationship with the appellant, but nothing worked. In this background, on 04-05-2000, the appellant left the matrimonial home and she never chose to return.

The conduct of the appellant has inflicted mental cruelty. And, she has also deserted the respondent without any lawful justification. Hence, the petition.

4. Denying the allegation in the petition, the appellant/wife would plead in her counter that she was a veterinary doctor, and has been working as an Assistant Professor and has been prosecuting her Ph.D., in Madras Veterinary College at Vepery. At the time of marriage, the respondent/husband was living with his parents in a rental house at Virukambakkam. Lived along with him there are his brother and sister. She would further allege:

- Even prior to the marriage, the respondent agreed to take out a house near her work place so that it would be convenient for both the spouses to commute to their respective work places.
- Respondent/husband alone has been avoiding the appellant-wife. He was suffering from acidity/peptic ulcers, but the appellant/wife never complained. When the father of the

respondent/husband died, it was not even informed to the appellant and her family. She has never been cruel to her husband nor she insisted to stay with her parents.

- The respondent/husband was aware that the appellant/wife was prosecuting her Ph.D., and that it was difficult for her to reach the hospital outpatient unit-duty and return home on time.
- The respondent's parent would repeatedly force him to go and sleep either in his brother or sister's house which were near the house where he resided. Her parents-in-law would ensure that the respondent/husband never slept with the appellant/wife. Further, they would also pick up frequent quarrel with her. Her husband's brother and sister too joined to quarrel with her. Her husband would however, apologize for their abusive misbehaviour to the appellant, and it was he who requested her to stay with her parents till his mother's attitude changed.
- The respondent-husband was hardly interested in taking care of his wife as he was working in shift-system. The respondent had given a compliant to the police as alleged in the petition only at the instance of his parents, brother and sister.
- Earlier, the respondent had filed O.P. for restitution of conjugal rights. During its pendency, he did not take any positive steps to comply with the directions of the Court for restoring the conjugal rights. Indeed, he chose to produce a rental agreement before the Court as if he had fixed up a house on rental for the couple to live together, but that was a make-believe as the present address given by the respondent-husband has not changed. It is self-evident that the said rental agreement was created for the purpose of the case. The appellant/wife has always been keen to join the respondent provided the respondent fixed up a separate residence near the work place of the appellant/wife as was promised by him prior to the marriage.

5. The Family Court which tried the case found merit in respondent's contention that the appellant had deserted him but not his contention that his wife's conduct amounted to mental cruelty. As indicated earlier, both the spouses have now found a cause to prolong their battle before this Court.

6. It is said that nothing is a wrong in War and Love. But when those who love, or at least ought to love, war, it can be lethal. Dirty linen is easily washed in public in a matrimonial cause. Even ordinary spousal differences are magnified and amplified to the extent one's power of exaggeration expands. There would be emotional overtones; Moral questions will be packed and presented as legal questions arising out of positive law. And, many a time both moral and legal issues are presented as a package of inseparable intricacy. Court therefore, is duty bound to forewarn itself of such tendencies that spouses often exhibit and need to look only for the core issue.

7. What is the core issue here? Not the allegations of frigidity or impotence, which parties alleged in their pleadings with utmost ease, but where the spouses should live: should they live in Virukambakkam, near Vepery or in Thousandlights, all different localities in Chennai, each one separated only by few kilometers. And, this is the core point that was argued with considerable stress before this Court.

8. The learned counsel for the appellant argued that there was a prenuptial agreement between the parties on where they should live post their marriage, but the respondent/husband walked on that promise and opted to stay with his parents at Virukambakkam. The husband denies it. According to him, he has his aged parents to care. The appellant would argue that the respondent was working in shift system and that she was treated badly by her parents-in-law and her husband's siblings. The respondent would retort that the appellant had hardly stayed with him, and would often stay with her mother in Thousandlights without intimation, from where she would insist that he joined her, and also held out threats of foisting false criminal cases against him and his family members, forcing him to prefer complaints to the police.

9. Where then the spouses should reside? What answers has the legal system? Ideally, and perhaps poetically, spouses should find comfort in each other's heart, but if they had considered that valuable to their matrimony they would not have been before this Court.

10. Technically no law can provide a solution, nor shall attempt one, for it would amount to invasion of the private space citizens in a democracy are entitled to decide. It should

be best left to the choice of the spouses. It is their life and their responsibility. However, when this forms a foundation in an action for dissolving a marriage, Court needs to consider if there is tenability in that contention, for it directly challenges the conjugal right of a spouse to live in the company of the other. Denial of connubial comfort to one of the spouses is a serious one, and the same can be justified only on grounds of violation of a right of that spouse who so denies it. In other words, it is violation of right of one of the spouses within the matrimony leading to the denial of right to spousal company to the other.

11. Is then the appellant has a right in law to insist where the spouses should live? Is it a recognised right enforceable before Courts of Law? As indicated earlier, it is not the concern of law to advice the spouses on it. It might be that there might have been some discussion on the subject prior to the marriage, and there might have been a broad agreement on it. It may then be termed only as a loose social contract and at no time can it be elevated to the status of a right in law, to call it a violation or breach of promise by the other spouse, when a matrimonial home was or could not be organised the way it was originally planned. After all, matrimony is a continuously flowing stream, and it runs peacefully through plains and at times bewilderingly through treacherous terrains. Its dynamics are unpredictable. Therefore, what spouses may plan as ideal may not materialise. Spouses then have to develop Plan B and work on it, and keep the stream of matrimony flow in its course. In this game, the wiser and the tactful succeeds.

12. The appellant might have either entertained a belief that she has a right in law to insist that a matrimonial home is organised the way it was promised to her by her husband, or has been made to believe so, but she must realise that law does not take cognizance of the same. She is informed in plain terms that no legally recognised right of hers is violated within the matrimony when her husband did not agree to move to a place of her choice or wish to commence a matrimonial home, to clothe her with a further right to deny her husband of her company. The unjustifiableness of the appellant's contention gets exposed when the stands she takes go inconsistent with the pleadings she had put forward in her counter. In her counter she did not deny the fact that she was staying with her mother, but would only allege that it was her husband's idea that she stayed with her mother in order she kept herself away from the cruelty of his family members. If it is true, what happened when the very man on whose suggestion she says she lived separately wanted her back? Why should she shift to another reason for not joining her

husband? It is apparent that the appellant is keen not to join her husband. Statutorily speaking she has deserted her husband without any justifiable reasons.

13. There are other reasons adduced - from husband's impotency to cruelty. They have not been seriously insisted upon. Even the conduct of the appellant would vouchsafe for it. Earlier, the respondent had filed a petition in O.P.No.877/2001 before Family Court for restitution of conjugal rights, and during its pendency the respondent had fixed up a separate apartment for the spouses to commence their residence, but this was rejected by the appellant then. The reason now voiced by the appellant through her counsel was that in the rent-note/lease deed pertaining to that arrangement, husband's has given his Virukambakkam address and not that of the rented apartment. This cannot be a reason that this Court should consider valid. Ultimately it is one of choice as to how one perceives a fact. The choice here is: To live together or not to. For one who decides to live together any distance is no distance and interpretation and understanding of facts would be in aid of it, but where matrimony is understood only in terms of rights and promises and not as emotions and experiences, different rules of perception prevail.

14. The decision is now well written on the wall: The appeal fails. This now takes to the evaluation of the case of the respondent on the sustainability of his cross-objection. Was the conduct of appellant amounted to mental cruelty? Mental cruelty has the ability to shadow-walk every aspect of matrimonial discord, and also can exist as an independent fact. In this case, the husband complains of specific instances of appellant's conduct as constituting mental cruelty as an independent cause. They chiefly comprised of his allegations that the appellant telephoned his colleagues and superior officers and informed them that he was impotent and that his parents were dowry seekers, and threatened him of implicating him in false criminal cases. For the first part there is no evidence, and for the second part there is only a complaint that he has preferred to the police, but the truth of the circumstances under which he preferred the said complaint is sought to be established solely through his self serving testimony, which this court does not consider adequate.

15. In conclusion, this court on a reappraisal of the evidence before it arrives at the same conclusion that the Family Court has earlier arrived at: That the marriage is liable to be dissolved on the ground of appellant's willful

desertion and not on the ground of mental cruelty. Consequently, both the appeal and the cross objection are dismissed, and the decree of the Family Court in O.P.1564/2003 dissolving the marriage between the parties is hereby confirmed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To:

1. The Judge
II Additional Family Court,
Chennai.
2. The Section Officer,
VR Section,
High Court, Ch-104

+1cc to Mr.J.Saravana Vel, Advocate, S.R.No.67488

+1cc to Ms.K.Sumathi, Advocate, S.R.No.67460

C.M.A.No.1999 of 2010
& Cros.Obj.No.53 of 2012

PVS (CO)
CS/22/01/18

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