

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A No.245 of 2010

V.Gomathi

... Appellant/Respondent

Vs.

M.Baskaran

... Respondent/Petitioner

Prayer: Appeal filed under Section 28 of Hindu Marriage Act against the order dated 26.08.2009 passed in H.M.O.P.No.51 of 2007 on the file of the Sub Court, Cheyyar and to set aside the same.

For Appellant : Ms.Baby for M/s.N.Suresh

For Respondent : Mr.K.G.Senthilkumar

JUDGMENT

The appellant, who is the wife of the respondent in H.M.O.P.No.51 of 2007, on the file of the Sub Court, Cheyyar, Thiruvannamalai District, has filed the above Civil Miscellaneous Appeal. The respondent filed the said H.M.O.P. for dissolution of marriage conducted between the appellant and the respondent on 04.05.2001.

2. According to the respondent, he got married with one Vijayalakshmi 16 years prior to filing of the said HMOP and in the wedlock, one female child, viz., Swetha was born through his first wife. His first wife, viz., Vijaya Lakshmi died in the year 1999, due to 'Cancer'. After the death of his first wife, the respondent herein married the appellant on 04.05.2001, as per the Hindu rites and customs. Immediately after the marriage, the appellant informed the respondent that she was not willing to marry him and her parents forced her to marry him. She also imposed a condition that only if the child Swetha born out of his first wedded wife is driven out from the house, she will live with the respondent. Now, The child is in the custody of her maternal grandmother.

3. The appellant is not willing to lead normal family life with the respondent and she is also not willing to have sexual relationship with the respondent and she used to express her irritation on the respondent as well as his parents and used to abuse him in filthy language. She was not willing to live in the village and wanted to set up a

family at Kanchipuram. In respect of many reasons, the appellant left the matrimonial home in August, 2002 and she is living with her parents. She got a job as a teacher at Vinayagar Montessori School at Magaral village. In spite of mediation held, she refused to live with the respondent. Therefore, the respondent issued a notice dated 18.09.2007 through an advocate. The appellant received the said notice and did not send any reply. Therefore, the above said HMOP was filed for dissolution of the marriage.

4. The appellant filed a counter and denied all the averments made in the HMOP petition and submitted that she married the respondent willingly and gave her consent for the marriage and she was also living with the respondent for more than 1 ½ years and there was good relationship between the appellant and the respondent. Only the respondent's mother has created problems and tortured the appellant. Unable to bear the torture of the mother of the respondent, the appellant consumed poison. The respondent requested the appellant not to disclose the said fact to the doctor. After treatment, the respondent left the appellant in her sister's house and did not take her back to the matrimonial home. On receipt of the notice issued by the respondent, the appellant's parents approached the Mudaliar Association at Kanchipuram for panchayat and the respondent has also agreed to take her back to the matrimonial home.

5. Before the Trial Court, the respondent examined himself as PW1, One Subramaniam was examined as PW2, President of Mudaliar Community and one Kannappa Mudaliar, Panchayatar, was examined as PW3. The appellant examined herself as RW1 and she did not mark any documents.

6. The Trial Court, considering the pleadings, oral and documentary evidence and especially the admission of the appellant that she consumed poison and attempted to commit suicide and that the child Swetha was brought up only at her maternal grand mother's house and also the evidence of RW2, who is a close relative of appellant, allowed the above HMOP. Against the said order, the present Civil Miscellaneous Appeal is filed.

7. Learned counsel for the appellant submitted that the child Swetha being brought up by her maternal grand mother from the date of the death of the first wife of the respondent, the appellant is ready and willing to live with the respondent. But the respondent is not taking her to the matrimonial home. The learned trial Judge failed to see that the appellant through her relatives tried for re-union of the appellant and respondent, the respondent refused to join with the appellant and prayed for allowing the appeal.

8. Per contra, the learned counsel for the respondent referred to the evidences of Pws 1 to PW3 and RW1 & RW2, and

submitted that the respondent has proved the cruelty of the appellant and her unwillingness with the respondent. In spite of panchayat, she refused to join with the respondent in the matrimonial home. Based on the facts, the learned Trial Judge passed the order and there is no reason to set aside the same. Hence, he prays for dismissal of the appeal.

9. I have heard the learned counsel for the appellant as well as the learned counsel for the respondent.

10. The respondent has filed the HMOP on the ground of cruelty caused by the appellant and for desertion. The contention of the respondent is that from the date of the marriage, the appellant insisted that the child of the respondent born through the first wife, viz., Swetha should not be in the matrimonial home. In view of the said condition, the child is brought up by her maternal grand mother. The appellant has also admitted in her cross examination that she consumed poison and attempted to commit suicide. In the counter statement, she has stated that she attempted to commit suicide only due to the cruelty of the mother of the respondent. She has not substantiated this contention by any acceptable evidence. On the other hand, RW2, who is her close relative, has categorically admitted in cross examination that committing suicide and threatening to commit suicide is very bad act. A reasonable person will have a fear to live with one person, who attempted to commit suicide. The respondent has also stated that he is living separately from the appellant due to her threaten to commit suicide by consuming poison. She has also admitted that she is working as a Teacher and that she has not sent any reply notice and had approached the Mudaliar Association. In the panchayat, the respondent agreed to live with the appellant in the matrimonial home within a period of three days, but failed to do so. The appellant has not examined any of the panchayataars or her relatives to show that she expressed her willingness to live with the respondent and only the respondent is not living with the appellant. The learned Judge, only upon considering all the above facts has allowed the HMOP.

11. In these circumstances, I do not find any reason to interfere with the order passed in HMOP No.51 of 2007 on the file of the Sub Court, Cheyyar. Accordingly, the order passed in HMOP No.51 of 2007 stands confirmed.

12. In the result, the Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Sub Court,
Cheyyar,
Thiruvannamalai District.

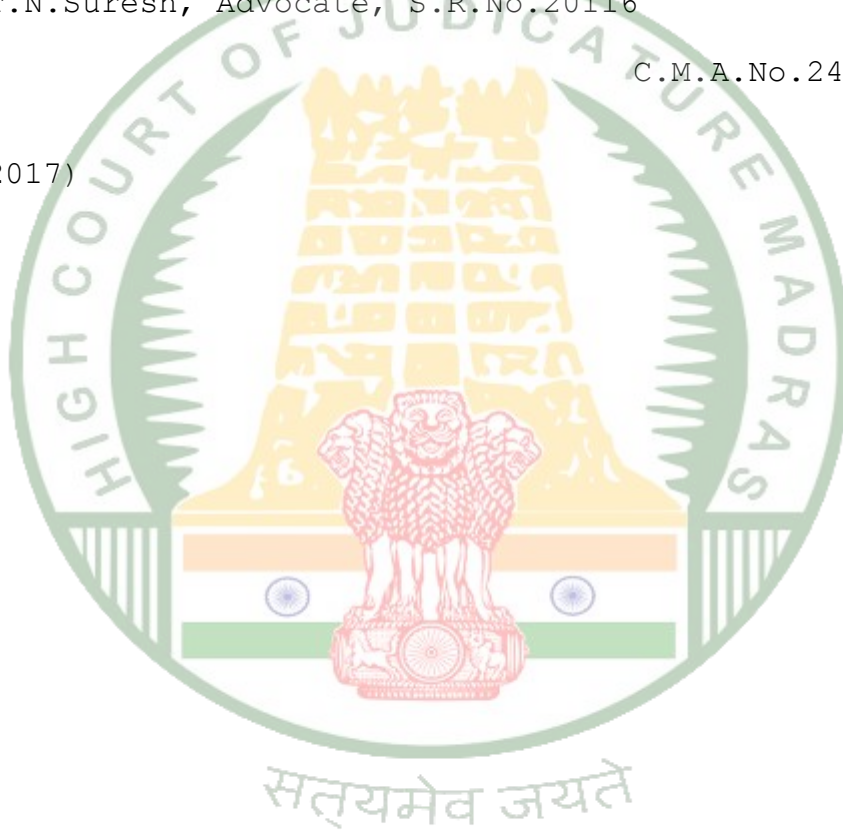
2.The Section Officer,
V.R.Section,
High Court, Madras 104.

+1cc to Mr.K.G.Senthilkumar, Advocate, S.R.No.19857

+1cc to Mr.N.Suresh, Advocate, S.R.No.20116

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PVS (CO)
CA(26/07/2017)



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