

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 09.11.2017****CORAM :****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****C.M.A. (MD) No.1081 of 2015**

WILCOPT Samuvel Stephen

... Appellant

Vs.

Suriyagandhi

... Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 55 of the Indian Divorce Act, to set aside the fair and decreetal order passed by the Principal District Court, Pudukottai in IDOP.No.7 of 2010 dated 26.03.2015 and to grant divorce.

For Appellant : Mr.P.Senthur Pandian
For Respondents : Mr.N.Thirunavukkarasu
for Mr.S.Balamurugan

JUDGMENT

The appellant is the husband. Wife is the respondent. Their marriage took place on 23.06.2000 at Pudukkottai as per Christian rights and customs. A male child was born on 17.05.2001. The parties are living apart from the year 2002 onwards. The appellant had sought restitution of conjugal rights by filing a petition and the same was withdrawn. He filed IDOP.No.139 of 2005 before the District Judge, Thoothukudi seeking dissolution of marriage with the respondent. The same was subsequently transferred to Principal District Judge, Pudukkottai and re-numbered as IDOP.No.7 of 2010. The petition has been filed on the grounds of desertion as well as cruelty.

2.The learned counsel appearing for the appellant fairly did not press the ground of cruelty pleaded in the petition. Instead he would focus more on the ground of desertion. The learned Trial Judge therefore dismissed the petition by order dated 26.03.2015. Aggrieved by the same, this appeal has been filed.

3.Heard the learned counsel for both parties.

4.It is the case of the appellant that even though he was well qualified, he could not get a proper employment. On the other hand, the wife is employed in a Government aided institution. It is quite possible that on account of this, the appellant had fallen into some kind of depression. The respondent wife however alleged that the appellant was a mentally retarded person. The appellant was even subjected to medical examination. It has been certified by the psychological doctor of Tirunelveli Medical College that the appellant does not suffer from any mental retardation. The counter filed by the respondent wife before the



Trial Judge is revealing. She had termed her husband as insane and mentally deranged.

5. In Paragraph 13 of the counter she has made it clear that it is not possible for her to live with the appellant. She has also stated that she has no option but leave the company of the appellant. When the wife on her own left the marital home, her conduct must be presumed as one attracting section 10(1)(a) of the Divorce Act, 1869. Of course if the conduct of the husband is provoked the wife to leave the marital home, the husband cannot take advantage to his own wrong. In the present case, even according to the wife, the husband has been suffering from mental illness. Therefore, the husband cannot be attributed with any willful element. In these circumstances, since the appellant husband cannot be said to be at fault, the aforesaid provision is clearly attracted in this case. For the last 15 years, the parties are living apart from each other. The appellant husband wants divorce. The wife does not want to live with him. The marital union has suffered an irretrievable break down. This court however is not granting divorce on that ground. The statutory ground for granting divorce is clearly made out in this case. Therefore, I set aside the order dated 26.03.2015 passed by the Principal District Court, Pudukottai in IDOP.No.7 of 2010. The marriage that took place between the parties on 23.06.2000 in Ephiphany Church, Pudukkottai stands dissolved.

6. Accordingly, this civil miscellaneous appeal is allowed. No costs.

Sd/-

Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar

To

1. The Principal District Judge, Pudukottai.

2. The Record Keeper, VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.N.Thirunavukkarasu, Advocate Sr.No.86171

+1cc to Mr.P.Senthur Pandian, Advocate Sr.No.86701

SKM

VB/JC/SAR2/27/11/2017/2P/5C

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