



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.06.2017

<i>Date of Reserving the Judgment</i>	<i>Date of Pronouncing the Judgment</i>
21.04.2017	01.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.A.(MD) No.211 of 2017 and
C.M.P.(MD) No.2532 of 2017

Merlin

... Appellant/1st Respondent**-vs-**

1.Immauel Jebaraj
2.Kannan

... 1st Respondent/Petitioner
... 2nd Respondent/Respondent

PRAYER: Appeal filed under Section 19 of Family Court Act, against the decree and judgment made in I.D.O.P.No.228 of 2016, dated 28.12.2016, on the file of the Family Court, Tirunelveli.

For Appellant : Mr.R.Suriya Narayanan
For Respondents : Mr.G.R.Swaminathan
for Mr.T.Antony Arul Raj for R1
Mr.V.Malaiyendran
for Mr.B.Charmurugan for R2

J U D G M E N T**T.S.SIVAGNANAM, J.,**

Heard Mr.R.Suriya Narayanan, learned counsel appearing for the appellant, Mr.G.R.Swaminathan, learned counsel appearing for Mr.T.Antony Arul Raj, learned counsel for the first respondent and Mr.V.Malaiyendran, learned counsel appearing for Mr.B.Charmurugan, learned counsel for the second respondent and carefully perused the materials placed on record.

2. This civil miscellaneous appeal is directed against the Judgment and Decree, dated 28.12.2016, in I.D.O.P.No.228 of 2016, on the file of the Family Court, Tirunelveli.

3. The petition, in I.D.O.P.No.228 of 2016, was filed by the first respondent / husband for divorce and since the same was filed on the ground of cruelty and adultery, the second respondent herein, who was the alleged adulterer was impleaded as a party

respondent in the divorce petition.

4. The marriage between the appellant and the first respondent was solemnized, on 03.10.2014, as per the Christian rites in a Church at Surandai. The husband would state that the entire marriage expenditure, including the jewels and the gold for making the Thali, was borne by him and he has spent a sum of Rs.12,00,000/- by availing loan. Further, the husband would contend that he was a dutiful husband and extending care and affection to his wife. On the other hand, the appellant / wife chided him stating that his appearance is like that of girl and used to make critical remarks about his appearance etc. The allegation made against the second respondent is that he came in contact with the appellant and the first respondent has seen certain obnoxious text messages and photographs of her in the mobile phone of the appellant were alleged to have been exchanged with the second respondent which will all go to show that the appellant was in relationship with the second respondent herein.

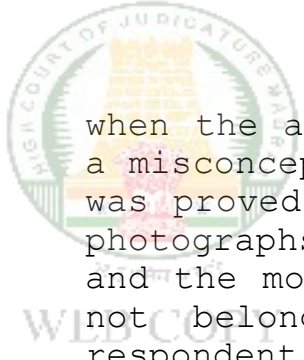
5. The appellant resisted the divorce petition by denying the allegations made by the husband and stated that the mobile phone numbers, which were referred to by the husband, were never used by her and denied all allegations. Further, the appellant has made certain allegations against the parents of the first respondent and stated as if the photographs in the mobile phone have been taken by the first respondent / husband and not by any other person and the text messages have also been sent by him. The second respondent also filed a counter statement denying the allegations made against him stating that all the allegations made by the husband are to bring disrepute to him and his profession as a Teacher.

6. Before the Family Court, the first respondent / husband examined himself as P.W.1 and marked thirteen documents as Exs.P1 to P13 and on the side of the appellant / wife as well as the second respondent, there was no oral and documentary evidence.

7. The Family Court framed two questions for consideration, namely, whether the husband is entitled to the decree of divorce and what other relief, the husband is entitled to.

8. After considering the oral and documentary evidence placed by the husband, the Family Court held that the allegation made by the husband that the appellant is living in adultery has not been proved, but the allegation of cruelty has clearly been established by the husband and accordingly, granted a decree of divorce.

9. The appellant / wife is before this Court contending that the judgment of the Family Court is cryptic and without reasons and the Family Court ought to have dismissed the divorce petition



when the allegation of adultery was not proved, but allowed it on a misconception of law and facts on the ground of cruelty as if it was proved by the husband. Further, it is contended that all the photographs, which were produced by the husband have been morphed and the mobile phone from which those videographs were taken does not belong to the appellant, but it belongs to the first respondent/husband. Therefore, it is contended that the impugned Judgment of the Family Court requires interference.

10. As noticed above, the appellant did not lead any oral or documentary evidence. The Trial Court considered the oral evidence of the husband and the documents marked by him and after taking note of the same, held that the husband has not been able to establish the ground of adultery, but has brought out the facts, which establish the allegation of cruelty and this finding recorded by the Family Court is based on the oral and documentary evidence placed by the husband. There was no contra evidence on the part of the appellant / wife. Therefore, for the first time, in this appeal, the appellant / wife would not be justified in raising contentions, which she had failed to raise before the Family Court. Thus, for all the above reasons, we find no ground to interfere with the Judgment and Decree passed by the Family Court, Tirunelveli.

11. In the result, the civil miscellaneous appeal fails and it is dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To:

The Judge,
Family Court,
Tirunelveli.

+ 2 CC TO Mr.R.SURIYA NARAYANAN, ADVOCATE IN SR No. 53788, 58251
+ 2 CC TO Mr.T.ANTONY ARULRAJ, ADVOCATE IN SR No. 58056
+ 1 CC TO Mr.B.CHARMURUGAN, ADVOCATE IN SR No. 58374

KRK

TE/RSK/SAR-II : 07/06/2017 : 3P/7C

Judgment in
C.M.A. (MD) No.211 of 2017 and
C.M.P. (MD) No.2532 of 2017
01.06.2017