



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.11.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.1372 of 2015

K.P.S.Thanmarai @ Thamaraiselvan

... Appellant

Vs.

Anbu Ammal

... Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 55 of the Indian Divorce Act, 1869 to set aside the fair and executable order dated 08.10.2015 passed in IDOP.No.4 of 2011 on the file of Ist Additional District Judge, Madurai.

For Appellant : Mr.D.Rameshkumar

For Respondent : Mr.J.Barathan for Mr.T.R.Jeyapalam

JUDGMENT

The appellant is the husband. The wife is the respondent. The marriage between the parties took place on 28.08.1998 as per Christian rites and customs. The marital relationship between the parties came under strain. This necessitated the filing of IDOP.No.1 of 2004 by the appellant seeking divorce. Since the matter was compromised, the said divorce petition was withdrawn by the appellant. Two children were born of the wedlock. The respondent is working as a Teacher in a Kallar Reclamation School. The appellant is working as a driver in Transport corporation. The children are with the respondent. The appellant is said to be paying a sum of Rs.5,000/- towards their maintenance. The appellant filed IDOP.No.4 of 2011 seeking dissolution of marriage. The Trial Court dismissed the said petition by order dated 08.10.2015. Questioning the same, the present appeal has been filed.

2.The learned counsel appearing for the appellant contended that the respondent is a person having suspicious nature. She lodged a dowry complaint against him. She also filed criminal case against him in Crime No.106 of 2008 on the file of Usilampatti Town Police Station. The same was charge sheeted and taken on file in CC No.128 of 2009 on the file of Judicial Magistrate No.I, Usilampatti. The appellant was finally acquitted. Following the acquittal, the appellant filed the present divorce petition. The



respondent in her cross examination had admitted that she suspected that the appellant was having illicit intimacy with more than one woman.

3. It is the contention of the learned counsel appearing for the appellant that the appellant was therefore justified in nurturing an apprehension that it would be harmful for him to live with the respondent. He also contended that the wife left the marital home in the year 2008. This petition was filed in the year 2011. Thus, for two years immediately preceding the presentation of the present divorce petition, the respondent had deserted the appellant herein. Therefore, divorce ought to have been granted to them on the grounds of desertion as well as cruelty.

4. The learned counsel appearing for the respondent would contend that the appellant had not made out a case which can be said to fall within Section 10(1)(x) of the Indian Divorce Act, 1869. The standard of cruelty stipulated in the Indian Divorce Act is higher. In this case, the said higher standard has not been made out. He also pointed out that the appellant had grievously injured the respondent. This only led to criminal prosecution. The appellant by his own conduct caused the respondent to leave the marital home. Therefore, he cannot take advantage of his own wrong and term the respondent conduct as one of desertion.

5. He drew my attention to Section 14 of the Act. If this Court comes to the conclusion that the appellant was guilty of cruelty towards the respondent, even if the appellant had established his case, this Court would be justified in declining the relief sought for in the divorce petition. The Trial Court rightly dismissed the petition and this Court ought to sustain the order passed by the learned Trial Judge.

6. I carefully considered the rival contentions and perused the materials available on record.

7. A careful perusal of the evidence on record would show that the respondent is deeply suspicious of the character and conduct of the appellant. The respondent also admitted in the cross examination that she had alleged that the appellant was having illicit connection with one Mallika Devi. She also admitted that she had linked the appellant with one Viji D/o. Murugesan. She had fought with the appellant on the road. It appears that the appellant continues to believe in worshipping his village deity. The respondent had stated that it is not acceptable to her and that the appellant is doing so in order to hurt her. The respondent admittedly prosecuted the appellant by lodging a criminal case against him. In view of this, the appellant is absolutely justified in having an apprehension in his mind that it would be harmful and injurious for him to live with the respondent. Such an apprehension is entirely reasonable.



8.The learned counsel for the respondent submitted that the respondent had produced a photograph Ex.R2 which indicates that the appellant was with another woman. This would only show that the respondent continues to nurture such an impression against the appellant. Admittedly, the respondent was away from the appellant for more than two years preceding the presentation of the petition. The respondent failed to establish any of her allegations against the appellant.

9.Maintenance proceedings were initiated and they came upto this Court. The fact remains that it was the respondent who left the marital home. Therefore, appellant is entitled to the relief of divorce. As regards Section 14 of the Indian Divorce Act, 1869 relied on by the learned counsel appearing for the respondent, I must state that the said provision can be pressed in to service only if this Court comes to the conclusion that it was established that the petitioner was guilty of cruelty towards the respondent. In the present case, the allegations made by the respondent have not really been established. Therefore, the said provision cannot be made applicable in this case.

10.The order dated 08.10.2015 in IDOP.No.4 of 2011 on the file of I Additional District Judge, Madurai is set aside. This Civil Miscellaneous Appeal is allowed. No costs.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To

1. The I Additional District Judge, Madurai.

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

+ 1 CC TO Mr.T.R.JEYAPALAM, ADVOCATE IN SR No. 88444

+ 1 CC TO Mr.D.RAMESHKUMAR, ADVOCATE IN SR No. 88087

SKM

TE/SV-MMS/SAR-1 : 02/01/2018 : 3P/5C

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