



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.388 of 2016

Antony Viladimir George ... Appellant/Petition-Husband

Vs.

S.Augusteen @ Augusteenal ... Respondent/Respondent-wife

Prayer: Appeal filed under Section 55 of the Indian Divorce Act, to set aside the judgment and decree dated 08.08.2011 made in I.D.O.P.No.107 of 2008 on the file of the District Judge, Kanyakumari at Nagercoil.

For Appellant : Mr.M.Suresh

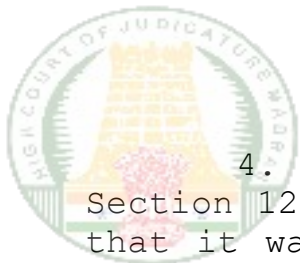
For Respondent : Mr.T.Selvakumaran

J U D G M E N T

Heard the learned counsel on either side.

2. The appellant is the husband. The wife is the respondent. Their marriage took place on 10.11.1999 as per Christian rights and Customs. The appellant filed I.D.O.P.No.107 of 2008 on the file of the District Judge, Kanniyakumari at Nagercoil, seeking dissolution of the marriage. A mere look at the petition filed by the husband would show that it is sought on the ground of desertion. Of course the petition has been filed under Section 10(i)(x) of the Divorce Act. The averments set out therein are not sufficient to attract the ground of cruelty as contemplated under Section 10(i)(x) of the Divorce Act.

3.The learned counsel appearing for the appellant also pressed his case on the ground of desertion. On the cause of action para in the petition, it is mentioned that the wife deserted the husband on 25.11.2000. But in the course of his examination, the husband admitted that up to 2006 he was living with the respondent. He claimed that on 03.07.2006 the respondent lodged a police complaint before the Valliyoor All Women Police Station, Valliyoor.



4. It is seen that the respondent filed a case under Section 125 Cr.P.C against the appellant in M.C.No.25 of 2006 and that it was allowed. The appellant herein was directed to pay a sum of Rs.600/- towards maintenance to the respondent.

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5. The learned counsel appearing for the respondent wife, complains that the appellant has not been remitting the maintenance amount. The learned counsel appearing for the appellant also stated that since 2008, the appellant has not been paying maintenance to the wife. This clearly shows the conduct of the appellant. He has not bothered to comply with the order of the Court directing him to pay maintenance to his wife. From this one can safely conclude that the conduct of the husband is responsible for the wife to leave the matrimonial home. The respondent wife lodged a police complaint in 2003. On account of the counselling of the police the parties re-united. Again problem arose in 2006. The respondent wife complained that there was a dowry demand. In any event the appellant has not established before the Court below that the wife willfully left the matrimonial home. Merely living away would not amount to desertion. The learned trial Judge rightly held that in the face of admission by the appellant that he was residing with the wife till 2006, the claim put forth in the petition that the respondent wife left the matrimonial home on 25.11.2000 stood falsified. The appellant has stated that the respondent wife filed a maintenance case against him and that order was passed in the said M.C.No.25 of 2006, and that there is no chance for re-union. Mere break down of the marital life is not a ground for grant of divorce. The petitioner/appellant ought to establish fault on the part of the wife. The onus lies only on him. This has not been discharged. In this case, the wife has shown that the conduct of the appellant was the cause for her leaving the marital home. The learned Trial Judge rightly dismissed the Original Petition. No ground has been made out to interfere with the said order.

6. Accordingly, the order dated 08.08.2011 made in I.D.O.P.No.107 of 2008 on the file of the District Judge, Kanyakumari at Nagercoil is confirmed. This Civil Miscellaneous Appeal stands dismissed. No costs.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

<https://hcservices.ecourts.gov.in/hcservices/>

The District Judge,
Kanyakumari at Nagercoil.



Copy to

The Section Officer (Vernacular Section),
Madurai Bench of Madras High Court,
Madurai. (2copies)

+ 1 cc TO Mr.T.Selvakumaran , Advocate in SR No. 89164
+ 1 cc TO Mr.M.Suresh , Advocate in SR No. 88837

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