



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No. 448 of 2015

and

M.P (MD) No. 1 of 2015

1.G.Daniel Sureshkumar ... Appellant/Respondent

Vs.

Leena Jenefa ... Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Rule 1 of Civil Procedure Code, r/w Section 55 of Indian Divorce Act, to set aside the judgment and decree made in I.D.O.P.No.17 of 2014 passed by the learned Family Court Judge, Tirunelveli dated 5.1.2015.

For Appellant : Mr.N.Ananthapadmanaban
For Respondent : Mr.K.Samidurai

JUDGMENT

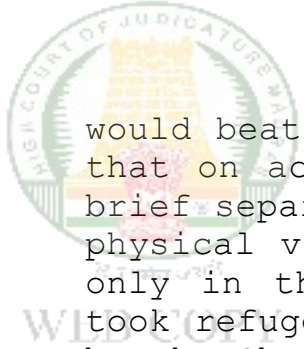
The parties herein got married as per Christian rites and customs on 31.05.2000. Both are working as Lecturers at the time of marriage. The wife applied for divorce by filing IDOP.No.232 of 2011(re-numbered as I.D.O.P.No.17 of 2014) on the file of Family Court, Tirunelveli, seeking dissolution of her marriage with the appellant herein.

2.The Trial Court granted divorce by order dated 05.01.2015. Questioning the same, this appeal has been filed at the instance of the husband.

3.Heard the learned counsel for the parties.

4.Before the Family Court, the wife examined herself as PW1 and also her minor child as PW2. The appellant examined himself as RW1. He also marked documents Exs.R1 to R13.

5.The learned counsel for the appellant took pains to assail the judgment passed by the Court below. He took me through the grounds of appeal. He would also point out that no effort was made by the Family Court to effect re-conciliation between the parties. I went through the entire material on record. Here is a case of a wife who 11 years after the marriage took place wants to snap the marital tie. She has alleged that the appellant herein



would beat her brutally. She has also made a specific allegation that on account of non-fulfillment of dowry demands, there was a brief separation following the birth of the child. The details of physical violence inflicted on her have been narrated by her not only in the petition but also before the Court. The wife even took refuge in a nearby house for a few days. Mediation was done by the Church elders. The specific allegation of the wife is that she was not able to put up with the behavior of her husband any further and if she continued to live with him, it would be injurious to her health. It is also stated that from 26.06.2008 onwards, the husband has been living separately. That is why the divorce petition has been filed not only on the ground of cruelty but also desertion. The child Rosenberg was examined as PW2. He stated in cross-examination that he had seen his father beat his mother. The child has stated that since 2008 he is residing with his grand parents only. The child had also stated that when he wanted to visit his mother in Malaysia and wanted the father to sign in the passport application, his father refused. The Court below accepted the testimony of the wife and the child and granted decree of divorce in favour of the wife against the husband. There is no justification in taking a different view. The deposition of the child is sufficient to disbelieve the defence version projected by the appellant/husband.

6.As already pointed out, the petition for divorce was filed on the ground of desertion also. Since the wife has alleged that she was a victim of physical violence at the hands of the husband, she was justified in residing separately. Therefore, both the grounds, that is, cruelty as well as desertion, have been sufficiently made out. I see no reason to interfere. This appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(A.E)

/True Copy/

Sub Assistant Registrar

To

- 1.The Family Court Judge, Tirunelveli.
- 2.The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.K.SAMIDURAI Advocate in SR. No. 83228

TSG

JS/JC/SAR.1/7.11.2017/2P-4C

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and**

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