

IN THE HIGH Court OF JUDICATURE AT MADRAS
DATED: 02.11.2018
CORAM
THE HONOURABLE MRS. JUSTICE BHAVANI SUBBAROYAN

C.M.S.A.No.15 of 2010

K.R.Savithiri

...Appellant /Respondent

..Vs..

S.Govindaraj

...Respondent/Petitioner

Prayer: Civil Miscellaneous Second Appeal filed under Section 28 of HMOP r/w 100 of the Civil Procedure Code, against the Judgment and Decree dated 17.03.2010 made in C.M.A. No.6 of 2008 on the file of Principal District Judge, Cuddalore in confirming the Fair and Decreetal order dated 25.10.2007 made in H.M.O.P. No.35 of 2006 on the file of the Principal Subordinate Judge, Cuddalore.

For Appellant : Mrs. R.Gowri

For Respondent : Mrs.R.Meenal

J U D G M E N T

This Civil Miscellaneous Second Appeal has been filed against the judgment and decree dated 17.03.2010 made in C.M.A. No.6 of 2008 on the file of Principal District Judge, Cuddalore, confirming the fair and decreetal order dated 25.10.2007 made in H.M.O.P. No.35 of 2006 by the Principal Subordinate Judge, Cuddalore.

2. The appellant herein is the wife of the respondent herein, the appellant has raised the substantial questions of law as follows:

"a. Whether the Courts below have failed to make an endeavor to appreciate facts and circumstances of the case in proper perspective so as to render a sound reason whether the Respondent herein has proved to the satisfaction of the Courts below by leading both oral and documentary evidence the cruelty and desertion as alleged by the Respondent so as to enable himself for the relief prayed for

under the provisions of Section 13(1) (ia) (ib) of the Hindu Marriage Act 1955.

b. whether the Courts have seen that the basic rudimentary principles of law mandates that the Petitioner seeking for a relief has to substantiate his case by both oral and documentary evidence and the burden of proof lies upon him and cannot take advantage of the defence of the Respondent.

c. Whether the Courts below miserably erred in relying upon only a portion of the evidence of the Appellant wife herein with regard to suicide attempt without going into the reasons that prompted the wife to attempt for suicide.

d. Whether the Courts below have erred in not applying the settled preposition of law that Courts should adopt proper approach to assess cumulative effect of facts and circumstances established by evidence on record and then draw inference and that stray admissions or individual instances of misbehavior are to be seen only in isolation and cannot be sufficient to establish mental cruelty when cumulative evidence on record does not lead to such inference. Failure to apply the said dictum of law and the Courts below relying upon the deposition of the appellant wife herein in an isolated manner without appreciating it in its entirety has resulted in miscarriage of justice.

e. Whether the Courts below have erred in not appreciating the entire case in proper perspective wherein it is categorically established by the Appellant wife herein that it is only she who suffered much cruelty with respect to the conduct of the Respondent husband and that the Respondent husband cannot seek for a decree of divorce on his own acts and conduct."

3. Originally, the husband / respondent filed a H.M.O.P. No.35 of 2006 praying for declaring the marriage between him and the appellant / wife conducted on 29.05.2005 to be dissolved by a decree of divorce. The appellant got married to the respondent on 29.05.2005 as per Hindu Customs at Cuddalore, Ariya Visya Thirumana Mandapam and the marriage between the two parties was not as smooth as they expected. The allegations was that, the appellant / wife has behaved indifferently in an abnormal way with the husband. The husband tolerated the act of the wife for several months and since there was no change in her attitude, he was disturbed a lot. The husband had content that the wife used to create problems and

frequently demanding money for her mother's family expenses and if he denied, she would quarrel with the husband and ill treated him and his mother. The wife used to leave the house of the husband and went to reside at her mother's house or her sister's house without any reasons and without informing the husband. It was also stated that, the wife also threatened the husband that she would commit suicide, if the husband failed to pay the demanded money. Since the wife treated the husband with cruelty both physically and mentally, the husband was not able to tolerate all the harassment of the wife as the husband belongs to a decent family. When the wife got pregnant she without even getting any permission or informing to the husband, went and aborted the child in the womb and it caused a mental agony to the husband, who was in a joyous mood that, he is getting a son or daughter who will be the legal heir to the family. The act of the wife for the alleged abortion would clearly prove the cruelty committed by her.

4. Once the wife / appellant tried to commit suicide, the Panchayat was held by the community on 05.09.2005. In the Panchayat, she promised that she will not attempt to commit suicide for any cause in future and she would abide by the words of the Panchayat and started living with the husband. Whenever, the husband failed to pay money as per her demand, she used to threaten her husband as she will give a police complaint against him and his mother under Dowry Prohibition Act as if her husband is demanding dowry.

5. On 06.03.2006, the wife / appellant had taken away all her belongings, jewels, other articles and also cash and move to her parent's house but, she has not gone there instead she resided in her sister's house at Koothapakkam. The repeated act of the wife was not tolerated by her husband. However, he called her to come back to the Matrimonial life but the wife did not come forward to live with him. Without knowing about the contents of the notice, the wife refused to receive the notice. Since the wife did not return back to the matrimonial house the husband had no other choice except to file a divorce petition.

6. The appellant / wife filed a detailed counter stating that, all the averments in the statements of the husband/respondent is false and she has stated that, her husband and mother-in-law harassed and tortured her. The husband used to torture her by hitting her and also the mother and the sister of the wife were scared by the husband. The aggressive attitude and behavior of the husband, made the wife to run away to her parent's house whenever there is a problem arises. The mother-in-law and the sister-in-law used to pacify the husband and they never interfere in the aggressive act of the husband. The allegations against the husband was that he used to demand money

and other jewels from the wife's parent's house stating that she is from the rich family and the wife's family is bound to pay the same and if not he will chase her out of the family by assaulting her.

7. After conducting an elaborate trial by examination and cross examination of the parties, the lower Court / Principal Subordinate Judge Cuddalore has come to the conclusion that the wife has admitted that, whenever she demanded money from her husband, if the husband does not pay the said money she would threaten him that she will file a complaint before the police stating that the husband is demanding dowry. Regarding the abortion, even though she initially denied that, she wantedly underwent the abortion, later she claimed that she was beaten by the husband and suffered an abortion. Subsequently, she corrected that she suffered the abortion naturally at that time when she was in the house of the sister. Therefore, the admission by the wife will be an evidence supporting the husband's case and she has also living for past 1-1/2 years away from her husband and she has taken away all her belongings from the house of the husband.

8. It could be seen from the evidence that, the wife has picking up quarrel to the trivial matters and abusing her husband and his mother and also threatened him by saying that she would commit suicide and also tried once. At the time of the Panchayat, she also undertaken that she will not repeat it again and she will behave normally. After analyzing the entire point that, the wife is in the habit of torturing the husband by saying that, she will commit suicide and give complaint before the police under the Dowry Prohibition Act and unauthorizedly keeps on going from husband house to the parent's house and also the cause of abortion, which as per her statement itself is contrary, would prove that cruelty was caused by her to the husband. Accordingly, the lower Court has allowed the petition of the husband.

9. The wife filed an appeal before the Principal District Judge, Cuddalore, in C.M.A.No.6 of 2008. The Appellate Court also has considered the case of the wife and on the appreciation of evidence, the Appellate Court has also felt that nothing available in the record to interfere with the reasoned order of the lower Court by granting divorce by nullifying the marriage of the petitioner and the respondent and the Trial Court has also taken adequate consideration for granting a sum of Rs.1,00,000/- as permanent alimony and accordingly, dismissed the appeal.

10. Heard, the learned counsel for the appellant and learned counsel for the respondent and perused the available materials on record.

11. On perusal of the materials on records and the statement given by the appellant / wife and the respondent / husband, this Court has come to the conclusion that even though the spouses entered into the matrimonial life with love and affection but at later point of time they erupted with anger, there arose some difference of opinion between the parties and bitterness prevail among the spouses. The appellant / wife used to demand money often from the respondent / husband and when the husband denied, she used to threaten him that she will give police complaint under Dowry Prohibition Act. Once she tried to commit suicide the same was aborted by the intervention of the relatives. The admission by the appellant/wife that she used to threaten her husband now and then will clearly show that the wife is at fault. Small/petty issues regarding the day-to-day affairs can be sorted out between the husband and wife, if there is real love existed between the parties. Therefore no such finding can be given since the appellant/wife is in a habit of nagging her husband and demanding money often to spend it for her mother and sister's family. The main dispute between the parties is when the appellant / wife become pregnant, without informing or getting permission from the husband, she went on her own and aborted the same, amounts to cruelty, since the husband was in the happy mind that he will be getting son or daughter and lead a normal life. The wife's abortion was a wanted act and it was not an accident, since she will not be blessed with any children in the said life. Even though, the wife has given an undertaking before the Panchayathars that she will not commit such mistakes in future. But she started again to quarrel with the husband, due to which, the husband was forced to file a petition for divorce.

12. Since the marriage is between the two persons and the life has to be led in a careful manner and there should be a give and take policy between the husband and wife and begetting is a boon to the feminine where the feminine part of the wife is exhibited, but the wife without informing the husband had aborted the child which is really a shock to the husband and would have caused mental cruelty to the husband. Hence both the lower Courts have rightly come to the conclusion that there is mental cruelty which had affected the husband's matrimonial life with the wife.

13. The questions raised by the appellant / wife on various grounds that, there is no oral and documentary evidences

to prove that, she has committed cruelty and that the said cruelty is not established by the respondent / husband cannot be accepted. The petitioner would submit that there should be distinction between the cruelty and sensitivity and emotion and same should have been applied to the case on hand, but the same is not supported by any evidence from the appellant / wife herein. The allegation that she only suffered much cruelty than the husband, is not proved with substantial evidence and cannot be accepted, since she herself has submitted that she used to threaten the husband and demanded for money.

14. The lower Court / Sub-ordinate Judge awarded a sum of Rs.1,00,000/- to the wife as a permanent alimony. As per the said order of the Court, the husband has deposited a sum of Rs.1,00,000/- on 10.06.2009 to the credit of H.M.O.P. No.35 of 2006 before the Principal Subordinate Judge, Cuddalore. Since the marriage irretrievably broken, there is no point in trying to unite the parties.

15. The learned counsel for the appellant / wife submitted that a sum of Rs.1,00,000/- was not paid to her. The learned counsel for the respondent / husband produced treasury receipt for paying the amount before the lower Court. Hence, the learned counsel is directed to find out whether any amount has been deposited. The wife is entitled to withdraw the said amount from the lower Court, by filing a formal petition before the lower Court. The Principal Subordinate Judge, Cuddalore is directed to disburse the same within a period of two weeks from the date of formal petition.

16. Based on the facts and circumstances as evidenced by the records and statements, this Court has an inference that mental cruelty has been afflicted on the husband and as such the appellant / wife cannot seek any favourable order from this Court. In view of the above findings, the substantial questions of law has been decided against the wife and in favour of the husband.

17. Accordingly, the Civil Miscellaneous Second Appeal is dismissed. The judgment and decree dated 17.03.2010 made in C.M.A.No.6 of 2008 made by the Principal District Judge, Cuddalore and the fair and decreetal order dated 25.10.2007 made in H.M.O.P.No.35 of 2006 made by the Principal Sub-ordinate Judge, Cuddalore are hereby confirmed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Principal District Judge,
Cuddalore.

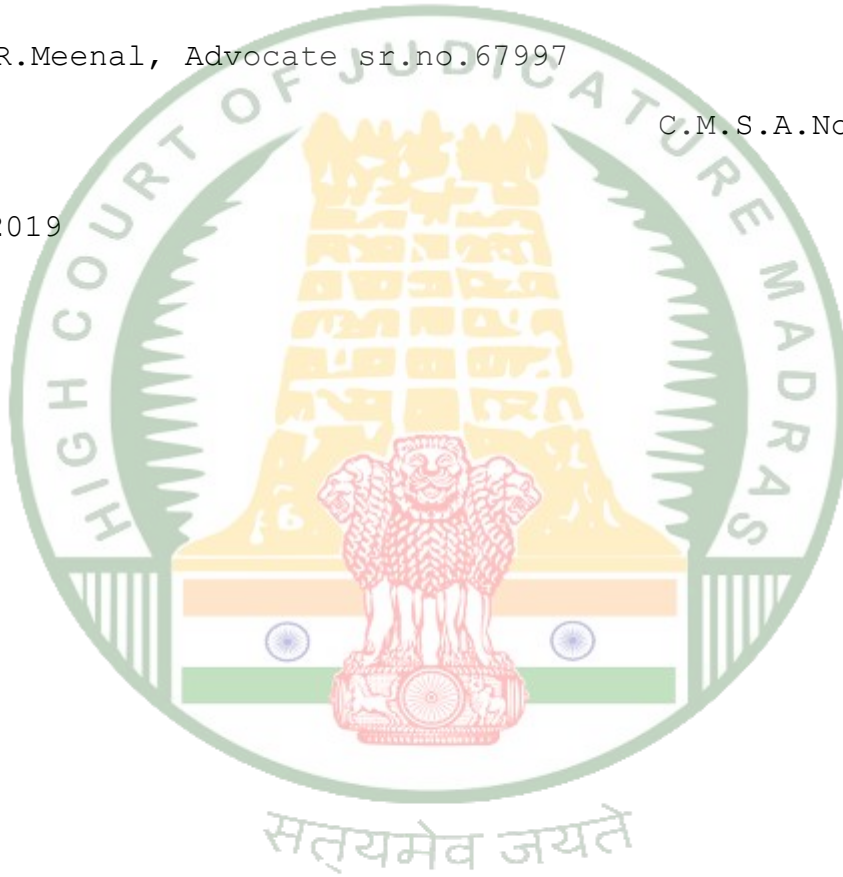
2.The Principal Subordinate Judge,
Cuddalore.

3. The Section Officer,
V.R Section,
High Court, Madras

+lcc to Mrs.R.Meenal, Advocate sr.no.67997

C.M.S.A.No.15 of 2010

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