

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2018

Coram:

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

C.M.A.No.3104 of 2012

R.Balasamundeeswari .. Appellant / Respondent

vs.

J.John Kennedy .. Respondent / Appellant

Civil Miscellaneous Appeal preferred Under Section 55 of ID Act against the order and decretal order of the learned Principal District Judge of Cuddalore allowing I.D.O.P.35 of 2006 by order dated 30.11.2011.

For Appellant : Mr.D.Baskar
for Mr.Nazurudeen

For Respondent : Mrs.S.R.Sumathy

JUDGMENT

The Appellant has filed this Civil Miscellaneous Appeal preferred against the order and decretal order of the learned Principal District Judge of Cuddalore allowing I.D.O.P.35 of 2006 by order dated 30.11.2011 filed under Section 55 of Indian Divorce Act, raising various grounds stating that the respondent/husband has treated the appellant/wife with cruelty and he is not entitled to the relief of divorce. The respondent/husband has not given any specific ground upon which he seeks divorce and he cannot be granted with divorce except on the ground mentioned in law and on facts. The respondent/husband has suppressed many facts and come to the Court with unclean hands and even tried to douse the respondent to death and hence he is not entitled to such relief.

2.The respondent/husband has already came into contact with another woman and in order to legalize his relationship with other women, he seeks divorce from the appellant/wife. The respondent/husband has throughout been after the appellant/wife's money and nothing else. The respondent/husband cannot be granted divorce for the mere asking or for convenience.

3.This Civil Miscellaneous Appeal has been filed by the wife to set aside the order of divorce granted by the lower Court. The case of the husband before the District Court, Cuddalore in I.D.O.P.35 of 2006 is as follows. The husband was petitioner in I.D.O.P.35 of 2006 and marriage has been solemnized as per the Christian custom on 02.07.2003 at Sacred Heart Church, Vadalur. At the time of marriage, the husband was working as a Elementary School Teacher in Panchayat School, Naduthittu and the wife was working as Junior Assistant in the District Forest Office, Villupuram.

4.After the marriage they were started living at Uluthur and the wife was travelling from Uluthur to Villupuram to her office and their child was born on 08.08.2004 which was named as Altrin. The allegation against the wife was that she was not honest and she did not even disclosed the salary which she was receiving. Eventhough the husband was not very particular about the salary but atleast some portion of the amount spend for the welfare of the family which the respondent/wife denied. The husband was suspicious that substantial portion of salary earned by the wife was given to her family where her mother and sister were enjoying the said amount when his family is not able to receive even a pie from his wife. When enquired about her salary she used to scold the husband in filthy language.

5.On 19.06.2005, the wife has brought her younger sister and made her to stay in the house and started to stay there permanently. Only later point of time he came to know that since she has eloped with some other boy his wife has brought her to their house. This act of wife was not liked by the husband and he was ashamed of such contact and while such stay of the sister in the house as it was came to his knowledge some unwanted elements came to his house and be a part of their house which act was not liked by the husband. Whenever her aunt visits the house, the wife used to scold the husband for the visit of his mother. Some office money which was kept under custody of the husband was stealthily removed by the wife and spent the amount lavishly later she has promised to return the same when she gets salary but she did not paid the same and quarrel arose due to this. One Sitarasu, who was a relative of wife brought some hooligans and assaulted the husband indiscriminately which caused injuries on his left palm and his private parts. The husband got admitted at Government hospital, Cuddalore and later point of time the relative of wife came to the husband and threatened him that if any police complaint was lodged he would be done away with. The wife gave a false complaint with All Women Police station as if the husband has threatened her and husband was interrogated by the police. He has narrated the above said matter and was compromised by the police and they were living separately for three months and the child was

allowed to be visited by the husband and by taking the child to his house on Saturdays and Sundays.

6.The wife did not resided in the said house in Vadalur and absconded without any notice. Hence, he was unable to visit his son and later he came to know that the child was brought up by her mother and she is not at all in a position to disclose the whereabouts of the wife and petitioner/husband brought his son back to his house and started bringing up by his parents. On 25.12.2005, a priest from Kurinjipadi called the husband and asked him take the respondent/wife back since she was willing to live with him. Again the wife and the husband started living from 01.01.2006 on that same day around 11.30pm she took the child and ran way from the house. Then only he came to know that all the proceedings of reunion was only to abduct the child and she she had no intention to live with him. She has been highly dishonest and treated the husband with cruelty both mentally and physically and she has also deserted him. And the husband issued notice on 23.01.2005 by his lawyer and the wife did not received the same and refused. Hence, the husband prayed for dissolving the marriage that took place on 02.07.2003 in Sacred heart church, Vadalur.

7.The wife has filed a counter stating that the marriage between the husband and wife and giving birth to a male child was accepted by the wife and all the other allegations were denied by the wife. The wife would further submit that the husband being the Christian made her to convert her to Christianity knowing pretty well the she was the eldest daughter of the family and the entire family depends on her, he married her two sovereigns of gold ornament was given to him and 18 sovereigns was given to the wife as Sridana. A motorcycle Suzuki-100 was purchased in loan on installment basis and presented to the husband besides other household articles. Every month she has to pay the dues from her salary. But insisting her to throw the entire burden of discharging all such debts on her mother, the husband refused to allow the wife to pay the installment amount from her salary. He wanted the entire salary to be handed over to him. Hence, there was a fight and filthy language used against the wife and the mother in law. Even started suspecting her fidelity, he abused her in filthy languages and insulted her by visiting her officer and enquiring about her salary and commenting upon it as one on par with that of a 'Peon'. The medical expenses for her delivery was raised by pledging her own jewels. The husband did not care even to visit his child and wife at the time of delivery. In Villupuram she stayed in a rental house so that she can keep her mother or his unmarried sister to help her in taking care of the child. The husband has lodged false complaint against her police and only after the police intervention who had deprecated the conduct of

the husband and has advised them to fix a house in Vadalur. The sister came only to assist the wife in taking care of the child and not for staying there permanently or otherwise. The husband used to beat the wife. Only on knowing this wife's maternal uncle condemned the husband, the husband attacked the maternal uncle and there was an exchange of assault between the parties and after that husband did not returned to the house. The wife also alleged that in the mid night on 21.08.2005, the husband attempted to set her ablaze, by pouring kerosene on her. By her alarm, the neighbours came and rescued her. She lodged a complaint with All Women Police Station, Neyveli.

8. There is a counter complaint against the wife's sister and maternal uncle. Then, only on advise of the police, they were living separately for 3 months. When she went to departmental training at Bavanisagar for 3 months, leaving her child with her parents, the husband had taken away the child forcibly from the custody of her parents. On coming back from the training, the wife took the child back from the husband with the help of some Panchayatdars and on advise of the Thuringikollai Church Father, the husband and wife was re-united on 08.12.2006. But nobody in his house talked to her. She was not served with any food. Hence, she came back to her house. The husband when he came back at 10.00 pm on 01.01.2006, abused her in filthy language and drove her out. No other go she left for her family and to parents house in the night. On the next morning she complained the same to the church father and she was waiting for the change in the attitude of the husband.

9. The wife further states that she neither treated the husband cruelly nor deserted him as alleged. The husband has developed an illicit intimacy with one Jeeva D/o Arokiyasamy was working as a Staff nurse in Chidambaram Annamalai Nagar Medical College and married her as a second wife. This would clearly show that he married her only for her salary not for nothing else. Hence, she want the petition to be dismissed.

10. The Principal District Judge, Cuddalore has on going through the materials on record has framed only one question for consideration: 'Whether the petitioner can be allowed as prayed for?' and has held that the husband has been very calculative and bent only upon the materialistic life which is found in the careful approach of the husband in converting the wife to Christianity. He has chosen to marry her thinking that she is a high class officer but when he has found that she is not so, this has resulted in utter dismay and frustration. Once he got married he wanted to grab the financial control of the wife. When the husband was resented by the wife, the relationship has come to a closure. Since, the attitude prevalent in equal distribution between the spouses. The closure has already taken

in their minds and hence based on the factors, the matter was dismissed. This would result in another petition being filed under a different nomenclature or ground. The family concept would not survive and he wants to put a fullstop to the said dispute if the best option available under the constitution is only granting of divorce that the spouses have been inflicting cruelty over the other in equal proportions and this can be granted technically as mutual cruelty. He left it open to the parties to decide about the alimony of the child custody or return of the Sridana articles or reconversion of wife to their choice and has allowed the petition for divorce.

11. Against this order, the present petition has been filed by the wife Balasamundeeswari wanted to set aside the said order by raising various grounds. When the matter was taken up today, the learned counsel appearing for the husband would submit that the wife has already married another person and she has got two children born out of second marriage living separately as per her wish and husband status is not known. Hence, the learned counsel for the appellant would also submit that based on the merits of the case, orders could be pronounced as she has already been married which has been stated by the husband's counsel. Since the wife has already married and settled there is no point in taking this case in further. She wanted to set aside the fair and decretal order of the Lower Court by raising various grounds in the year 2012 meanwhile she has chosen separately path for fresh and new life on her own and nothing survives in this petition for taking a decision whether the Lower Court has exhausted its jurisdiction and deciding against granting decree of divorce to the husband.

12. The counter has been filed by the husband wherein it has been submitted that the wife/appellant herein got married to one Balasubramanian alias Subramanian five years ago. She has given birth to two children namely Logeshwarman and Jayakandhan. She is living at Ulundurpet. The appellant/wife herein and the said Balasubramanian are employed in Forest Department, Villupuram District.

13. From the findings of the Lower Court, it is found that both the parties are to be blamed wherein there was a cruelty committed by the wife that she has beaten her husband and not disclosed her whereabouts and she gone for training and abandoning the life with her husband, stealthily removed the child as she has reunited, false complaint by her sister that the petitioner has raped her. Equally there is cruelty committed by the husband in insisting on the salary received by the wife, failure to support the family when the wife during her delivery time and other difficult times, making unnecessary contacts in her office and attempt to murder her and failure to provide her

with basic food and other things when she came and tried to settle with him. All these incidents would show that both parties are to be blamed as already she has alleged that the husband is having another relationship with a women and the wife is in relationship with another person and two children of her own. The decree granted by the Lower Court is upheld and it could be seen that the marriage has been broken irretrievable and hence, there is no point in holding on to this marriage by both the parties since the wife is married to another person.

14.Hence, in view of the same this Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vji/nsd

To

The Principal District Judge,
Cuddalore.

+1 cc to Mrs.S.R.Sumathy, Advocate, S.R.No.68604

copy to: The Section Officer,
VR Section, High Court, Madras.

C.M.A.No.3104 of 2012
and
M.P.Nos.1 & 2 of 2012

EV(CO)
SSM(25/03/2019).

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