

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.12.2017

DELIVERED ON : 26.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.774 of 2011
and
M.P.No.1 of 2011

Manoranjitham
W/o.Palaniappan
Appellant

..

Vs

K.Palaniappan
S/o.Kandasamy
Respondent

..

Civil Miscellaneous Appeal filed u/s.19(1) of Family Courts Act against the order of learned Judge, Family Court, Salem, passed in F.C.O.P.No.71 of 2007 on 18.02.2011.

For Appellant : Mr.V.Raghavachari
For Respondent : Mr.S.Kalyanaraman

J U D G M E N T

[Judgment of the Court was made by C.T.SELVAM, J]

This appeal arises against the order of learned Judge, Family Court, Salem, passed in F.C.O.P.No.71 of 2007 on 18.02.2011.

2. Appellant and respondent were married on 27.05.1992. They have four children, the first daughter born on 28.02.1993, twin daughters born on 23.03.1997 and a son born on 03.06.1998. Respondent filed F.C.O.P.No.71 of 2007 on the file of Family Court, Salem, seeking a decree of dissolution of marriage on the grounds of cruelty and desertion. Respondent was examined as P.W.1 and Exs.P1 to 3 were marked. Appellant was examined as R.W.1. Under judgment dated 18.02.2011, Court below held in favour of respondent/husband and passed an order of dissolution of marriage on the ground of cruelty and desertion. There against, appellant/wife has preferred the present appeal.

3. Heard learned counsel for appellant and learned counsel for respondent.

4. In F.C.O.P.No.71 of 2007, respondent/husband had informed of his being an employee of Salem Steel plant and of having shifted residence from a rented house in Maramangalathupatty village to his native village Vettukadu, Konganapuram, towards helping his parents in circumstance where his aged father had fallen of a coconut tree and sustained fractures and he, the only son of his parents, had to take care of them. Though appellant/wife had consented to such move, she started picking up quarrels with the respondent and his parents and was a constant source of harassment. The pleadings of respondent as also advice of the elders of the locality yielded no fruit. Around August 1994, appellant/wife instigated her parents and brother to be at his house with weapons, threatening the respondent/husband and his parents with dire consequences. Respondent/husband has exercised restraint through out and did not prefer any police complaint towards avoiding further strain in the relationship. However, immediately after such incident, respondent voluntarily deserted the matrimonial home with the first child without just or reasonable cause. Though Panchayats were held they did not produce any fruitful results. On the instigation of others, appellant/wife required respondent to abandon his aged parents and shift back residence to Maramangalathupatty village. Towards maintaining good family relationship, respondent, succumbing to the pressure of appellant and the family, shifted residence to Maramangalathupatty in or around July 1996. Appellant did not mend ways and she attempted self-immolation and was saved owing to timely intervention of neighbours. Respondent's fond hopes of appellant/wife mending ways never fructified. Appellant gave birth to twin girls on 23.03.1997 and out of concerns of children welfare, respondent continued to live with appellant. The improper behaviour of appellant/wife continued unabated. In the meanwhile, another boy child was born on 03.06.1998. Appellant dragged respondent to the Salem Police Station and an undertaking to reside only at Maramangalathupatty village was forced of him. Appellant manhandled respondent and his mother. After the birth of the boy, appellant's parents and brother threatened the respondent that they would not hesitate to murder him if he did not bow to their dictates. As he had to take care of his aged parents, unable to look after themselves, as also their lands, respondent had no alternative but to shift his residence in July 1998 to his native place. Appellant had refused to join him. There are good schools within a short distance of his village and as a responsible father he was interested in giving them good education. On the other hand,

appellant was bent on the children developing a hatred for him. Respondent filed application for restitution of conjugal rights in F.C.O.P.No.170 of 2000 on the file of Family Court, Salem, which was allowed on 16.09.2003. Appellant failed to join him and to take care of his aged parents, who had become sick and invalid. Appellant was only interested in extracting money from him and towards harassing him and his parents, appellant preferred police complaint at the Edapaddy Police station alleging offences u/s. 498(A), 323 and 506(ii) IPC. A charge sheet was filed against respondent and his parents and the same was pending trial in C.C.No.203 of 2005 on the file of Judicial Magistrate II, Sankari. Appellant filed petition in M.C.No.35 of 2005 on the file of Family Court, Salem, seeking maintenance, which was allowed on 16.05.2006 and the respondent was directed to pay Rs.2,500/- p.m. Alleging cruelty, desertion and failure of appellant to co-operate with husband despite the order of restitution of conjugal rights, respondent had sought the relief of dissolution of marriage.

5. In her counter, appellant/wife, while denying the allegations made against her, had informed that shifting of residence to Maramangalthupatti was not at her instance but only was towards affording proper education to minor children. She had informed that as a mother of four children, she had no alternative but to do the bidding of respondent/husband and it was he, who always behaved arrogantly without realizing his responsibility as a father and always found fault with her at the instance of his parents and relatives. Appellant's obedience and fulfilment of the desires of respondent/husband could be read from the very birth of four children within a short period. It was owing to the respondent failing to make any provision for her and four children that she had to move Court seeking maintenance. Respondent/husband was not regular in paying the paltry sum of Rs.2,500/- ordered towards maintenance of her four children and herself. The entire burden was being borne by her father. Appellant was provided a sum of Rs.72,000/- and 70 sovereigns of gold jewels by her father but she regularly was tortured by the respondent and dowry demands often were made. At the instigation of his parents respondent used to severely beat the appellant over petty issues. As such conduct continued unabated, appellant along with children was forced to take up residence with her father. Although the employer of respondent, M/s.Salem Steel Plant provided decent quarters within the campus, respondent was adamant in residing at his father's house in a village where there were no educational facilities. It was only owing to brutal and wild attacks suffered by her at the hands of respondent and her in-laws that she had preferred a complaint which was registered in Crime.No.272 of 2005 on the file of Edapaddy Police Station for offences u/s.498(A), 323 and 506(ii) IPC. As appellant's father was a retired teacher he could not manage the family consisting of five persons viz.,

appellant and her four children. Appellant moved M.C.No.35 of 2005, seeking maintenance, in which a sum of Rs.2,500/- p.m was ordered and she had moved a petition for enhancement. Alleging that the respondent sought divorce to marry another, she had sought dismissal of the petition.

6. Respondent/husband has examined himself and marked four exhibits. Appellant/wife examined herself and no exhibits were marked. Court below, under orders dated 18.02.2011, granted decree of divorce. Challenging the same, appellant/wife has filed the present appeal.

7. This is a peculiar case where the parents of four children are at loggerheads and where it appears that their being so is owing to concerns of respondent/husband regards his parents and properties at a village while that of appellant is regards providing proper education to the children. That there have been minor differences between the couple is evident from the fact that there was a self-immolation bid by appellant/wife in 1996 and respondent/husband has been convicted for offence u/s.323 IPC in C.C.No.203 of 2005 on the file of Judicial Magistrate II, Sankari, pursuant to registration of case against him. The act of cruelty in attempting self-immolation by appellant in 1996 must be seen as condoned as pursuant to orders in M.C.O.P.No.170 of 2000 dated 16.09.2003, Ex.P1, where under respondent had obtained an order of conjugal rights, the couple as also the children had taken a leave travel concession offered by respondent's employer and travelled to Andamans in 2004. The proceedings seeking divorce have been initiated by respondent in 2007. The reasons informed by appellant viz., that of need to stay at Maramangalthupatti as there were no educational facilities in the respondent/husband's parents' village would not survive as the children presently are grown up and similarly, reasons put forth by respondent i.e., of need to take care of parents and their properties and hence, the need to reside at the village may also not hold good. Proper medical facilities available at city/townships as against the lesser facilities available at villages generally is a concern which weighs in favour of housing elders where there are better medical facilities. Even though allegations of dowry demands have not found acceptance of the criminal Court, it is to be seen that appellant has been found guilty of voluntarily causing hurt to respondent. When persons are in dispute, exaggerations of wrongful conduct of the other side, all too often, are made. In a strained relationship, the act of appellant/wife moving a suit for partition of family properties can be seen as only towards protecting the interest of her own brood. Respondent/husband would now be 52 years of age and appellant/wife would be 48. Without seeking to suggest any moral policing, it would not be wrong to inform societal perceptions and state that it would be in the interest of their three

daughters, now married or of marriageable age, that the parties be seen as a couple.

The Civil Miscellaneous Appeal shall stand allowed and the order of learned Judge, Family Court, Salem, passed in F.C.O.P.No.71 of 2007 on 18.02.2011, shall stand set aside. No costs.

-s/d-

Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

To

1.The Judge,
Family Court,
Salem.

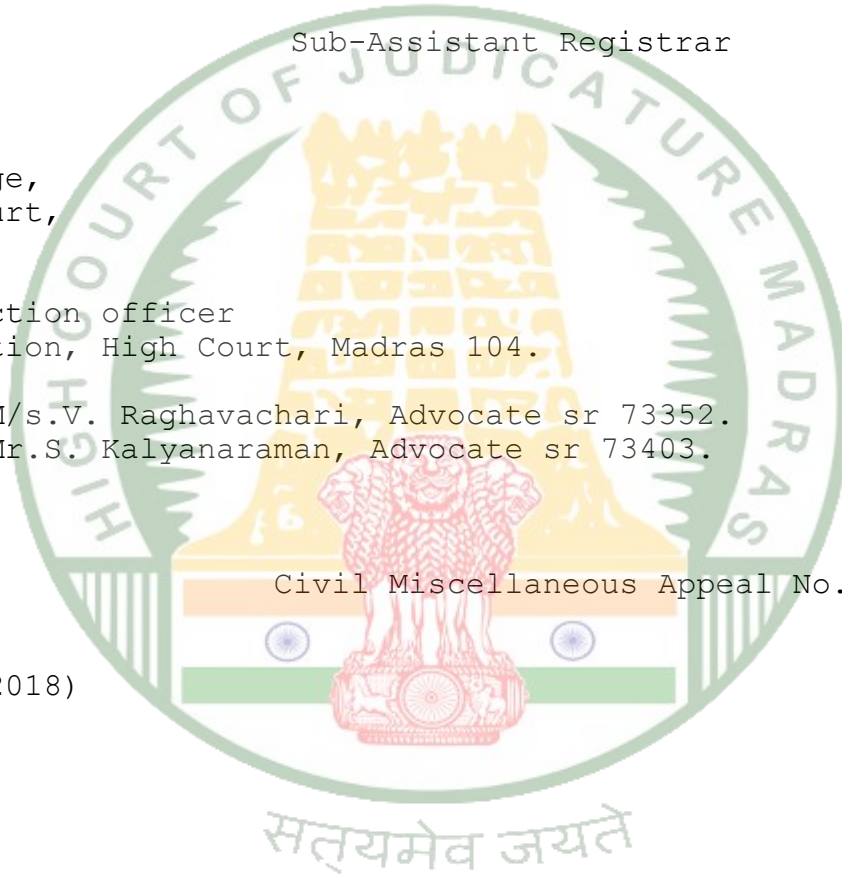
2. The Section officer
VR Section, High Court, Madras 104.

+1 CC to M/s.V. Raghavachari, Advocate sr 73352.

+1 CC to Mr.S. Kalyanaraman, Advocate sr 73403.

Civil Miscellaneous Appeal No.774 of 2011

NRL (CO)
SP(16/11/2018)



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