

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09-03-2018

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

Civil Miscellaneous Appeal No. 2043 of 2011

N. Senthilvel .. Appellant/Petitioner

Versus

A. Tamilselvi .. Respondent/Respondent

Appeal filed under Section 19 of The Hindu Marriage Act against the Judgment and Decree dated 30.03.2011 made in H.M.O.P. No. 369 of 2008 on the file of Family Judge, Coimbatore.

For Appellant : Mr. N. Chandra Raj
For Respondent : No appearance

JUDGMENT

(Judgment of the Court was delivered by R. Subbiah, J)

The appellant is the husband and the respondent is the wife. The appellant has filed this appeal challenging the Judgment and Decree dated 30.03.2011 made in H.M.O.P. No. 369 of 2008 on the file of Family Judge, Coimbatore. By the said Judgment dated 30.03.2011, the Family Court refused to dissolve the marriage solemnised between the appellant and the respondent and thereby dismissed the Original Petition filed by the appellant

2. The case of the appellant, as stated in the Original Petition, is that the marriage between the appellant and the respondent was solemnised on 22.01.1996 at Perur Vinayakar Temple, Coimbatore. According to the appellant, the marriage is a love marriage, but arranged by elders of both sides. After the marriage, the appellant and the respondent lived at No.9, Devendra Street, West Singanallur, Coimbatore. At the time of marriage, the appellant was employed as a Collection Agent in a Finance Company and was earning Rs.2,000/- per month. Due to the wedlock, a female child was born on 04.07.1997. According to the appellant, during 2011, he went to Government Hospital, Coimbatore and subjected himself to a routine medical check up. During the course of such medical examination, the blood samples of the appellant were drawn and the result revealed that the appellant was affected by HIV (Positive) i.e., AIDS (Acquired Immunes Deficiency Syndrome). The appellant was shocked by such test report and he also

revealed it to his family members. At the request of the appellant, the respondent and the minor daughter also underwent similar blood test and the test report revealed that the respondent and the minor female child were also affected by HIV disease. According to the appellant, on coming to know about the test results, the whole family was traumatised. At the same time, the respondent left the matrimonial home during the year 2001 by taking the minor child with her and was residing at her parents house. Even though the respondent returned to the matrimonial home, she started harassing the appellant as if he is responsible for the ailment. The respondent started quarrelling with the appellant and abused him in front of every one. In fact, the respondent made attempt to commit suicide in the matrimonial home, but it was prevented by the neighbours. The respondent could not be convinced and whenever the appellant tried to pacify her, she threatened the appellant by stating that she will kill him by mixing poison in the food he consumes. The respondent has also given a false complaint against the appellant before the B-5 Women Police Station, Coimbatore based on which an enquiry was conducted. The appellant apprehends that the respondent would take some extreme steps and may throw the blame on the appellant. On and from November 2007, the appellant and the respondent are residing separately. In such circumstances, the appellant has filed the Original Petition seeking to dissolve the marriage solemnised between him and the respondent on 22.01.1996 on the ground of cruelty.

3. The original petition was resisted by the respondent/wife filing a counter affidavit contending that the appellant had married her by suppressing his ailment. According to the respondent, even before marriage, the appellant knew that he was suffering from AIDS disease and suppressing the same, he married the respondent. In fact, soon after the marriage, the appellant fell sick often and whenever it was questioned by the respondent, the appellant attempted to convince the respondent about his ailment as a normal one due to general weakness. Therefore, the averment that only during the year 2011, the appellant came to know about the dreaded disease is false. Notwithstanding the same, the respondent is only struggling to get proper medical treatment so as to ensure that the intensity of the disease gets subsided. Further, the respondent discharged all the domestic chores as a responsible wife. The respondent never threatened to kill the appellant. The respondent was made and compelled to desert the matrimonial company of the appellant since the appellant ignored the welfare of the respondent and the minor daughter. The appellant did not return to the matrimonial home for number of days and the respondent could not maintain herself and the minor child. It is only in those circumstances, the respondent left the matrimonial company of the appellant and her desertion is not without any just or sufficient cause. The respondent is ready and willing to continue the matrimonial relationship with the appellant and therefore, she prayed for dismissal of the appeal.

4. Before the Family Court, on behalf of the appellant,

the appellant examined himself as PW1 along with one Siddhardhan as PW2 and marked Exs. P1 to P6. On behalf of the respondent, she examined herself as RW1 and marked Ex.R1. The Family Court, on analysing the oral and documentary evidence, concluded that the appellant did not prove by any material evidence that he was subjected to matrimonial cruelty at the instance of the respondent. The Family Court also concluded that when the respondent and the minor child also suffered HIV disease through the appellant, the respondent might have behaved harshly towards the appellant out of emotional outburst and it cannot be said to be an act done by the respondent by which the appellant was subjected to matrimonial cruelty. Therefore, the Family Court refused to accept the claim of the appellant that he was subjected to matrimonial cruelty by the respondent and dismissed the Original Petition.

5. The learned counsel for the appellant would contend that the Court below failed and neglected to take into account the deposition of PW1 and 2 in the proper perspective. The appellant, in his deposition, has clearly narrated the ordeal he had undergone in the matrimonial life especially the verbal assault and harassment caused to him by the respondent. The appellant had clearly deposed that he was treated very badly by the respondent and thereby subjected to matrimonial cruelty in all forms and manifestations. In such circumstances, the statement made by the respondent in the counter affidavit that she is ready and willing to join the appellant in the matrimonial home is an illusion. The Family Court also failed to consider the fact that the respondent herself admitted in the counter that she is residing in her parents house since November 2007 and that the long and separate living of the appellant and the respondent itself is sufficient to hold that the appellant was subjected to matrimonial cruelty and he prayed for allowing this appeal.

6. Even though notice was served and the name of the respondent is printed, none appeared for the respondent.

7. We have heard the counsel for the appellant and perused the materials placed on record. According to the appellant, he came to know about the ailment only after the marriage, but it was denied by the respondent by stating that even before the marriage, the appellant knew that he had HIV - AIDS but by suppressing the same, he had married the respondent. It is further stated by the respondent that notwithstanding the same, she continued to shower love and affection towards the appellant and the minor child and she only wanted to get good treatment for the ailment which the appellant, respondent and the minor daughter are suffering. In other words, the respondent denied that she did not leave the matrimonial home on her own but she was forced to go out of the matrimonial home because the appellant, after coming to know that the respondent and the minor daughter are suffering from the disease, started neglecting them.

8. On perusal of the order passed by the Court below and

on consideration of the oral and documentary evidence, we are of the view that the appellant did not substantiate the allegations made in the Original Petition to the effect that he was subjected to matrimonial cruelty at the instance of the respondent. The averments made in the Original Petition are bald and vague and they are not such that it warrants dissolution of the matrimonial relationship between the appellant and the respondent on the ground of cruelty. Further, we find that for his own wrong, the appellant cannot seek dissolution of the marriage. The Family Court has come to a correct conclusion that a normal prudent woman will get agitated on coming to know that she contracted the dreaded disease by reason of the matrimonial relationship with her husband especially when the minor female child born to them also was made to suffer such disease for no fault of her. Therefore, even assuming that the respondent had confronted the appellant or quarrelled with the appellant owing to the fact that she contracted the disease through him, it cannot be said to be inflicting matrimonial cruelty on the appellant. On an over all analysis of the evidence made available, we are of the view that the order passed by the Family Court does not suffer from any infirmity warranting our interference. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

To
The Judge,
Family Court, Coimbatore.

SJ(CO)
SMI/28.08.2018

CMA No. 2043 of 2011

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