

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 02.08.2018

Judgment Pronounced on : 26.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2508 of 2016
and
C.M.P.No.17784 of 2016

V.Santhi .. Appellant

Versus

K.Kumar .. Respondent

Civil Miscellaneous Appeal filed under Section 19(1) of the Family Courts Act against the fair and decretal order dated 01.08.2016 made in F.C.O.P.No.401 of 2012 on the file of the Family Court, Salem.

For appellant : Ms. Zeenath Begum
For respondent : Mr. R. Gunasekaran

JUDGMENT
R.SUBBIAH, J

This appeal is filed by the appellant-wife questioning the correctness and validity of the decree of divorce granted by the Family Court, Salem on 01.08.2016 in F.C.O.P.No.401 of 2012 filed by the respondent-husband.

2. The averments in F.C.O.P.No.401 of 2012 filed by the respondent-husband for dissolution of the marriage are delineated in the below mentioned paragraphs.

3. According to the respondent, the marriage between himself and the appellant-wife was solemnized on 21.11.2001 as per the Hindu rites and customs at Athanur Amman Temple, Rasipuram, Namakkal District. At the time of marriage, the appellant-wife was gifted with a traditional "Thali" together with gold chain totally weighing 5 sovereigns. After marriage, the appellant-wife and the respondent-husband started their matrimonial life in the house of the respondent-husband's parents as a joint family. The appellant-wife did not like to live along with the parents of the respondent-husband and therefore she continuously nagged the respondent to set up a separate residence at Paarapatti, where her parents are residing.. Since the respondent-husband is the only son to his parents, he refused to set up a separate residence by leaving his age old parents. Further, the appellant-wife refused to do the household chores such as cooking and washing the clothes and utensils. When this was questioned by the respondent-husband, he was scolded by her with abusive language. She also scolded the parents of the respondent by stating that they are

instrumental for the refusal of the respondent to set up a separate abode for their stay. On 06.01.2011, the appellant-wife scolded the respondent's mother in abusive language and caused mental agony to her, as a result, the respondent's mother developed depression and on 07.01.2011, she fell into Coma. The respondent's mother was admitted in a hospital and she was treated for a period of seven days. During the period of such hospitalisation, the appellant-wife did not bother to even visit her mother-in-law in the hospital, even for a single day. On 13.01.2011, the respondent's mother died. When the obsequies/last rites of the respondent's mother were performed, the appellant-wife scolded the respondent-husband in filthy language in front of others and also the deceased mother of the respondent. When the relatives made an attempt to pacify her, she was not prepared to correct or control herself and continuously abused the respondent. On 05.02.2011, when the respondent-husband questioned the appellant-wife as to why she was not doing the daily family chores, she made an attempt to assault him. On 30.06.2012, the respondent-husband fell sick and when he called the appellant-wife to take him to hospital, she not only refused to assist him but scolded him by calling him in singular word. Finally, with the help of relatives, the respondent went to hospital and took treatment. At the time when the respondent was hospitalised, she left to her parents house and stayed there and thereafter she did not return. Further, when the respondent was hospitalised, the appellant gave a false complaint to the Kondalampatti Police Station and on the basis of the complaint, the police personnel came to the hospital, informed the respondent about the complaint given by the appellant against him and asked him to come to the police station after his discharge. Accordingly, after his discharge from the hospital the respondent, went to the police station. After enquiring the respondent, the police personnel called upon the appellant to come for an enquiry, but she did not turn up. Thereafter, a panchayat was convened in the presence of elders during which the appellant categorically informed that she will not join the matrimonial company of the respondent unless a separate residence is set up for their stay at Paarapatti. According to the respondent, from the date of marriage, the appellant subjected him to matrimonial cruelty in various forms and manifestations. The appellant has caused physical and mental cruelty to the respondent and his family members. Due to such act of the appellant, the respondent was put to shame and degradation in the midst of his friends and relatives. In those circumstances, the respondent has filed the Original Petition for dissolution of marriage on the ground of cruelty.

4. Repudiating the above averments made in the Original Petition filed by the respondent-husband before the Family Court, the appellant-wife has filed counter stating that at the time of marriage, she was given 35 sovereigns of gold ornaments and was given "seer" worth Rs.75,000/- and cash of Rs.50,000/- by her parents. She denied the averment of the respondent-husband that she was continuously insisting him to set up a separate residence and compelling him to live with her parents. According to the appellant, she was regularly doing the daily family chores as a dutiful wife. The appellant-wife neither abused the respondent-husband, nor his parents, as alleged. The allegation of the respondent-husband that the appellant-wife used to scold him and his parents, is nothing but a figment of the imagination. When the respondent-husband expressed his intention to buy a lorry, the appellate-wife immediately gave her 35 sovereigns of jewels to him. By selling the gold jewels given by the appellant, the respondent-husband purchased a lorry. It is utter falsehood to state that since the appellant-wife scolded the mother of the respondent, she developed depression and fell into Coma. The respondent's mother died only due to old age ailments. When her mother-in-law was in hospital, it was the appellant-wife who took care of her. Purposely, all the allegations were made against the appellant with ulterior motive to get a decree of divorce. Though almost 12 years have lapsed from the date of their marriage, still, they have no issues, due to which, frequent quarrel emanated between the couple. Since the respondent-husband harassed the appellant-wife for not bearing a child and also physically assaulted her, the appellant-wife lodged a complaint with the Police. Above all, even at the time of giving the complaint and thereafter, the appellant was staying only in the matrimonial home and she did not desert the matrimonial company of the respondent, as alleged. Even at the time of filing the instant Original Petition, the respondent was staying in the matrimonial home and therefore the question of desertion will not arise. The

appellant-wife is always having love and affection with the respondent-husband and thus, he prayed for dismissal of the divorce petition filed by the respondent-husband.

5. Before the Family Court, the respondent-husband examined himself as P.W.1 and one Jayapaul was examined as P.W.2 and four documents were marked as Exs. P1 to P4 on his side. On behalf of the appellant, the appellant-wife examined herself as R.W.1, besides one Vadivel as R.W.2, but no document was marked on her side.

6. The Family Court, on analysing the oral and documentary evidence, has rendered a specific finding that the appellant in her chief examination as DW1 has stated that the respondent is having an illicit intimacy with one Indumathi. This was also reiterated by her in her cross-examination. However, in the counter filed by the respondent in the Original Petition, she did not utter anything as regards the so-called intimacy the respondent had with the said Indumathi. The Family Court further rendered a finding that the said Indumathi is a relative of the respondent and the said Indumathi has also filed a Petition before the Additional Mahila Court, Salem seeking compensation from the appellant for having defamed her through her deposition in the Original Petition as if she is having an illicit relationship with the respondent and the said petition is pending. The factum of pendency of such petition filed by the said Indumathi has also been admitted by the appellant in her deposition, as RW1. The Family Court further rendered a finding that even though the appellant had alleged that the respondent is in an adulterous living with the said Indumathi, it was not substantiated by her by any concrete evidence. Even though the Family Court did not render a finding as to the correctness or otherwise of the allegation that the respondent is living in adultery with one Indumathi, the Family Court concluded that by virtue of such an allegation made by the appellant during her deposition besides giving a complaint to the police, it will certainly cause pain and injury to the respondent. Accordingly, the Family Court granted a decree of divorce as prayed for by the respondent. Aggrieved by the same, the present appeal is filed by the wife.

7. Learned counsel for the appellant-wife submitted that the entire allegations made against the wife, in the Original Petition, are very bald and vague in nature. Though it is the case of the respondent-husband that the appellant-wife was abusing him and his parents, absolutely there is no evidence produced to substantiate the same. In fact, the case of the respondent-husband that since she had abused his mother in abusive language on 06.01.2011, his mother developed depression and fell into coma, was disbelieved by the trial Court itself, and after having disbelieved the version, the Family Court ought to have dismissed the petition for divorce. On the other hand, the Family Court has erroneously allowed the divorce petition filed by the respondent-husband on the ground that there was irretrievable break-down of the marriage between them, which is not the ground for granting divorce under Section 13(1) of the Hindu Marriage Act. Since the appellant-wife is not able to bear a child, the respondent-husband, with an intention to send her out of the matrimonial home, has filed the petition for dissolution of the marriage on false allegations. In this regard, learned counsel for the appellant-wife submitted that because she is not bearing a child, the same cannot be a ground for granting decree of divorce. Since the allegation of cruelty was not proved by oral and documentary evidence, the Family Court ought to have dismissed the petition filed by the respondent-husband for divorce and he prayed that the appeal may be allowed.

8. Countering the above submissions of the learned counsel for the appellant-wife, the learned counsel appearing for the respondent-husband submitted that the respondent-husband is the only son to his parents. From the date of marriage, the appellant-wife was insisting and nagging him to set up a separate residence at the Village where her parents are residing, by leaving his parents alone in the matrimonial home. Further, the appellant not only refused to do the house hold chores, but also scolded the respondent and his family members for no reason. In other words, the appellant was always quarrelsome.. The above harassment caused to the respondent and his family members

was clearly spoken to by the respondent as PW1 before the Family Court. On the other hand, R.W.1, in her evidence, has made a specific allegation against the respondent-husband that he is having illegal relationship with one Indhumathi and the father of the appellant-wife who was examined as R.W.2, has also adduced evidence supporting the said allegation. The said Indhumathi is none other than the respondent's sister's daughter. The respondent's sister died at the age of 28 years by giving birth to a girl child, namely the said Indhumathi, who was aged five years. The father of the child married another lady within three months from the date of death of his wife. Therefore, the child was brought up and grew under the care and custody of the respondent, as he is the child's maternal uncle and he was 23 years elder than the child Indhumathi. Even during the time of marriage of the respondent with the appellant, it was informed to the appellant-wife that the child Indhumathi will be one of the family members in the matrimonial life and the appellant also accepted the same and agreed for marriage. Further, under the direct custody and care of the respondent-husband, the child Indhumathi studied upto MCA and she was married to one Mr.Saravanan on 02.10.2010. Since the appellant-wife has made allegations against the respondent-husband, alleging that he is having extra marital life with the said Indhumathi, she has lodged a private complaint against the appellant for defamation, before the Additional Mahila Court, Salem under Section 200 Cr.P.C. to punish the accused/appellant herein under Sections 499, 500 and 501 IPC., and this fact was also brought to the knowledge of the Family Court. On the basis of the above evidence, the Family Court has come to the conclusion that when the appellant-wife has made an allegation specifically against the respondent-husband, which was absent in the counter affidavit filed by her in the Original Petition, such averment is nothing short of character assassination of the respondent-husband. The Family Court has further concluded that only at the time of adducing evidence, the appellant has made sweeping allegations against the character and conduct of the husband/respondent, which was not substantiated. The Family Court therefore, came to the conclusion that it is the appellant-wife who is suspicious in nature and harassed the respondent-husband in all forms and manifestations and caused cruelty. Ultimately, the Family Court granted a decree of divorce holding that the appellant had subjected the respondent to matrimonial cruelty. Such a factual finding rendered by the Family Court need not be interfered with by this Court and therefore, the learned counsel for the respondent/husband prayed for dismissal of the appeal.

9. We have given our anxious consideration to the submissions made by counsel for both sides and perused the materials available on record. As we have dealt with the factual matrix of the case put forward by both the parties in detail, we are of the view that the further narration of facts is not required. However, certain facts which are germane and necessary alone are dealt with by us, only for the purpose of this appeal.

10. The respondent-husband has filed the Original petition before the Family Court seeking dissolution of marriage between him and the respondent on the ground of cruelty. According to the respondent, he is the only son to his parents. The appellant, knowing that it is the respondent who is taking care of his parents, insisted him to come and live along with her in a separate house near her parents house by leaving the parents. Further, the appellant-wife was abusing not only the respondent-husband, but also his mother. On 06.01.2011, she abused the mother of the respondent in filthy language, which resulted in the mother getting depression and resultantly, she fell into Coma. Ultimately, on 13.01.2011, the respondent's mother died. When the last rites of the mother were going on, the appellant-wife scolded the respondent-husband and also abused the departed soul in front of the crowd gathered in the place. On 26.02.2012, when the respondent-husband fell ill, she refused to accompany him to hospital. When the respondent was admitted in the hospital on 30.06.2012, she lodged a false complaint in the Police Station.

11. All the above allegations were denied by the appellant-wife. According to the appellant, she discharged her duties as a dutiful Hindu wife, she looked after the respondent and his parents well

and there was no occasion for her to abuse or scold the respondent or his parents. It is her contention that she never deserted the matrimonial company of the respondent without any just or sufficient cause. The matrimonial rift had been caused owing to the fact that there were no children born due to the wedlock between the respondent and the appellant for which she cannot be found fault with. However, the respondent and his family members have teased and taunted her for not giving birth to a child and this was projected as the main reason for the matrimonial differences between the couple.

12. However, we find from the records that at the time of adducing evidence before the Court as R.W.1, she has specifically stated that the respondent-husband developed illegal intimacy with one Indhumathi. This statement is not made in the counter filed by the wife before the Family Court. Similarly, R.W.2, the father of R.W.1 (appellant-wife) has also made some statement against the respondent-husband. Further, in the cross-examination of P.W.1 (husband), a suggestion was put forward as to whether the allegation that he developed illegal intimacy with the said Indhumathi is true or not. PW1 deposed that the said Indhumathi is none other than his sister's daughter. PW1 further deposed that since his sister died when the Indhumathi was five years old, it is he, as a maternal uncle, had brought her up. In fact, the respondent-husband has clearly deposed in his evidence about the relationship between him and the said Indhumathi. Further, P.W.1 (husband) has also stated in his evidence that Indumathi was given in marriage and she is residing along with her husband. According to PW1, the allegation that he is having illicit intimacy with Indumathi is scandalous and it amounts to character assassination, thereby he was subjected to acute pain and hardship. According to PW1, the above unsubstantiated allegation made by the appellant would only show her intention to defame him and the said Indhumathi.

13. Before the Family Court, it was stated that in view of the unceremonious allegations made by appellant, during the course of her deposition in the Original Petition as RW1, against the said Indumathi, she has filed a complaint against the appellant-wife before the Additional Mahila Court, Salem in C.C.No.44 of 2014 under Sections 499, 500 and 501 IPC, which was pending. The Family Court, considering the fact that the allegations relating to adulterous living of the respondent was not brought out in the counter filed in the Original Petition by the appellant, has concluded that it was an after-thought calculatedly designed to defame the respondent-husband.

14. Be that as it may. Though the allegations were made against the respondent-husband, alleging that he is having an illicit intimacy with his own sister's daughter Indhumathi, the appellant-wife has not produced any evidence to substantiate the said allegations. Therefore, the Family Court, while considering these aspects, came to the conclusion that making allegations against the respondent-husband and indulging in character assassination against a spouse by the other and failure to substantiate it in a manner known to law, is nothing short of cruelty as it would cause acute mental pain and agony to the other spouse. We are in full agreement with the said finding rendered by the Family Court. The fact remains that the appellant, in her counter filed in the Original Petition, did not make any reference to the so-called illicit relationship of the respondent with the said Indumathi, however, suddenly, during her deposition, she has alleged about the relationship the respondent had with the said Indumathi. In such circumstance, we hold that the conduct of the respondent in making unsubstantiated allegation touching the morality of the respondent would definitely cause him mental agony and pain and it would fall within the scope and ambit of 'cruelty' as defined under The Hindu Marriage Act. While so, we do not find any infirmity in the impugned order passed by the Family Court granting a decree of divorce to the respondent-husband.

15. In the result, the Civil Miscellaneous Appeal is dismissed confirming order dated 01.08.2016 made in F.C.O.P.No.401 of 2012 on the file of the Family Court, Salem. No costs. Consequently, connected miscellaneous petition is closed.

(R.P.S.J) (C.S.N.J)

26.09.2018

Index: Yes/no

Speaking Order: Yes/no

cs/rsh

To

The Presiding Officer,

Family Court,

Salem.

R. SUBBIAH, J

and

C.SARAVANAN, J

cs/rsh

Pre-delivery Judgment

in

C.M.A.No.2508 of 2016

26.09.2018