

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22-06-2018

Pronounced on : 24-10-2018

CORAM:

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

Civil Miscellaneous Appeal Nos. 321 and 2273 of 2016

G. Vijay Anand .. Appellant in both the appeals

Versus

G. Rajarajeswari .. Respondent in both the appeals

C.M.A. No. 321 of 2016:- Appeal filed under Section 19 of The Family Courts Act, 1984 against the Order dated 05.10.2015 passed in HMOP No. 876 of 2013 on the file of Additional Principal Judge, Additional Family Court, Coimbatore.

C.M.A. No. 2273 of 2016:- Appeal filed under Section 19 of The Family Courts Act, 1984 against the Order dated 05.12.2014 passed in HMOP No. 719 of 2011 on the file of Additional Principal Judge, Additional Family Court, Coimbatore.

For Appellant : Mr. Thilageswaran
in both the appeals

For Respondent : Mr. G. Gunasekaran
for Mr. I. Abrar Mohammed Abdullah
in both the appeals

COMMON JUDGMENT

R. Subbiah, J

Both these appeals are filed by the appellant/husband. The appeal in C.M.A. No. 321 of 2016 has been filed by the appellant against the Order dated 05.10.2015 passed in HMOP No. 876 of 2013 on the file of Additional Principal Judge, Additional Family Court, Coimbatore allowing the petition filed by the respondent under Section 9 of The Hindu Marriage Act for restitution of conjugal rights. C.M.A. No. 719 of 2011 has been filed against the order dated 05.12.2014 dismissing HMOP No.719 of 2011 filed by the appellant for dissolution of the marriage solemnised with the respondent on the ground of cruelty.

2. As the issue involved in these appeals are inter-twined and inter-connected with each other, they are taken up for hearing together and are disposed of by this common Judgment.

3. The appellant herein has filed HMOP No. 719 of 2011 against the respondent under Section 13 (1) (i-a) of The Hindu Marriage Act for dissolution of marriage. According to the appellant, the marriage between him and the respondent was solemnised on 02.03.2008 at Suguna Kalyana Mandapam, Coimbatore as per Hindu rites and customs. It is his contention that after the marriage, the respondent lived with him only for a few days and she was in the habit of deserting the matrimonial company very often without any intimation to him. It is also his case that the respondent often engaged him in quarrel and thereby made his life miserable. The respondent very often indulged in quarrel not only with the appellant but also with his family members which resulted in the appellant loosing his concentration in doing his work. While so, on 19.04.2008, due a cardiac ailment, the mother of the appellant was admitted as an in-patient at KTVR Hospital and subsequently admitted on 21.04.2008 at Ramakrishna Hospital, Coimbatore, but during such hospitalisation, the respondent never looked after the appellant's mother and stayed in her parents house. In effect, when the mother of the appellant was hospitalised, the respondent left the matrimonial home without any reason and returned to the matrimonial home only on 01.05.2008. Notwithstanding such desertion & without intimation, on 16.05.2008, the respondent along with her parents, relatives and unknown persons came to the matrimonial home, picked up a quarrel and assaulted the father of the appellant causing grievous injuries to him all over his face. The appellant's father was therefore admitted in V.G. Hospital, Thudialur on 17.06.2008. In this context, a complaint was given by the appellant based on which the police personnel from Thudialur Police Staiton came to the hospital and recorded the statement of the father of the appellant. That apart, when the appellant and the respondent stayed together in the matrimonial home, during a petty quarrel, the respondent threatened the appellant by stating that she would commit suicide by showing a chunk of tablets in her hand. Thus, according to the appellant, he was subjected to matrimonial cruelty by the respondent and he had a reasonable apprehension that it would not be safe to live with her any further. The appellant therefore filed HMOP No. 1021 of 2008 before the Family Court, Coimbatore and pending the matrimonial proceedings, a compromise was entered into between the appellant and the respondent through mediators and well wishers and the respondent came back to the matrimonial home on 16.11.2008.

4. It is the further contention of the appellant that the respondent conceived and therefore, she was taken to Kalpana Women Centre for periodical check by the mother of the appellant. During a routine check up in the hospital, the respondent, without any intimation to the mother of the appellant who accompanied her, left the clinic and went to her parents house. This attitude of the respondent had caused a reasonable apprehension in the mind of the appellant that it would not be possible to lead a peaceful matrimonial life with her. On 19.12.2009, a male child was born and even the birth of the child was not intimated to the appellant. After the birth of the child, inspite of repeated requests, the respondent refused to come to the matrimonial home. While facts are so, the appellant received a notice dated 18.09.2010 from the respondent in which the respondent demanded return of her personal belongings and jewels given to her at the time of the marriage. The appellant sent a reply dated 05.07.2010 promising to return all the belongings through Court of law. As the respondent was no longer interested to lead a matrimonial life with the appellant, which was explicit from the notice dated 18.09.2010 sent by her, the appellant has filed the Original Petition for dissolution of the marriage.

5. Countering the averments made in the Original Petition, the respondent has filed a counter affidavit contending inter alia that at the time of marriage, she was provided with 120 sovereigns of gold and diamond ornaments, house hold articles such as wooden ward rope, wooden cot and bed, silver articles, silk saris, ordinary saris etc., by her parents on being demanded by the appellant. According to the respondent, after marriage, she did not desert the matrimonial company of the appellant without any intimation or did she quarrel with the appellant for no reasons, as alleged. On the contrary, the respondent was driven out of the matrimonial home by the appellant on 16.05.2018 and therefore, on 17.05.2018, the respondent was constrained to give a complaint to The All Women Police Station, Thudialur. On the basis of such complaint, an enquiry was conducted by the police and the appellant sought time till 25.05.2008 to take back the respondent into the matrimonial home. While so, the appellant has filed HMOP No. 1021 of 2008 for dissolution of the marriage. During the pendency of the HMOP No. 1021 of 2008, a compromise was arrived at between the appellant and the respondent and the appellant had also given a written undertaking on 12.05.2008 addressed to the All Women Police Station, Thudiyalur to take the respondent back to the matrimonial home. Accordingly, the appellant and the respondent resumed their matrimonial life on 16.11.2008. On 19.12.2009, a male child was born to the respondent. When the respondent was residing in her parents house, she came to know that the appellant is intentionally allowing his mother and relatives to use the gold

and diamond jewels presented to her at the time of marriage and therefore, she had sent a notice on 18.09.2010 to return all the jewels and her house hold belongings. As there was no response from the appellant, the respondent was constrained to file a petition in D.V.A. Case No. 15 of 2011 before the Judicial Magistrate No.I, Coimbatore for return of jewels. The respondent never threatened the appellant that she would commit suicide by consuming tablets. The respondent never subjected the appellant to any cruelty as alleged in the Original Petition. The instant petition is hit by the principles of res judicata as the earlier petition filed by the appellant in HMOP No. 1021 of 2008 was already dismissed. Therefore, the respondent prayed for dismissal of the Original Petition.

6. During the pendency of HMOP No. 719 of 2011 filed by the appellant, the respondent has filed HMOP No. 876 of 2013 contending that after the marriage, the appellant and the respondent lived happily along with the father and mother of the appellant. It is the contention of the respondent that the mother of the appellant never allowed the appellant to accompany her separately and that she will also accompany them whenever or wherever they go. The mother-in-law used to shout at her in a louder voice and when the father-in-law objects to it, even he will not be spared. On 16.05.2008, due to a wordy quarrel, the appellant and his mother assaulted her and had driven her out of the matrimonial home and hence, she had given a complaint to the All Women Police Station, Thudiyalur on 17.05.2008 for their intervention. During the course of enquiry, the appellant sought time till 25.05.2008 to take a decision to bring back the respondent to the matrimonial home. However, the appellant has only filed HMOP No. 1021 of 2008 for dissolution of the marriage and during the pendency of the same, a compromise was reached, whereby the respondent was taken back to the matrimonial home on 16.11.2008. On 19.12.2009, due to the wedlock, a male child was born. When the respondent was in her parents house, she learnt that the appellant permitted his mother and relatives to use her jewels and therefore, she sent a notice dated 18.09.2010 to the appellant and she has also filed D.V.A.C. No. 15 of 2011 before the Judicial Magistrate No.I, Coimbatore for return of jewels and the same was allowed. Aggrieved by the said order, the appellant has filed an appeal before the IV Additional District Judge, Coimbatore and it is pending. According to the respondent, she is always ready and willing to live with the appellant. The respondent only wants to lead a blissful and happy matrimonial life with the appellant. Therefore, she filed the Original Petition for restitution of conjugal rights.

7. The petition for restitution of conjugal rights filed by the respondent in HMOP No. 876 of 2013 was resisted by the appellant by filing a counter. According to the appellant, the respondent deserted his matrimonial company without any just and

sufficient cause and without even intimating him. Therefore, the appellant filed HMOP No. 1021 of 2008 and during the pendency of the same, after mutual discussion and deliberations, the appellant had taken the respondent back to the matrimonial home. After resumption of marital life, the respondent became pregnant and when she was taken to the clinic for examination, she left the clinic without the knowledge of his mother and stayed in her parents house. On 19.02.2009, a male child was born but the respondent did not allow the appellant or his parents to see the child. Even in the counter to HMOP No. 719 of 2011 filed by the appellant, the respondent never expressed her willingness to join the matrimonial company of the appellant, rather, she only made reference about her jewels in the custody of the appellant and alleged that the jewels were misused by the appellant's mother. The respondent also filed DVAC No. 15 of 2011 for return of jewellery and dress material which only goes to show that she has no inclination to join the matrimonial company of the appellant. When HMOP No. 719 of 2011 was posted for cross-examination of the respondent, she has filed the petition under Section 9 for restitution of conjugal rights only with the sole intention of prolonging the matrimonial proceedings. The appellant therefore prayed for dismissal of the petition for restitution of conjugal rights filed by the respondent under Section 9 of The Hindu Marriage Act.

8. Before the Family Court, separate evidence was recorded in both the original petitions. In HMOP No. 719 of 2011, the appellant/husband examined himself as PW1 and marked Exs. P1 to P5 on his side and the respondent/wife examined herself as RW1 and marked Exs. R1 to R3 on her side. In HMOP No. 876 of 2013 filed by the respondent/wife for restitution of conjugal rights, she examined herself as PW1 and marked Exs. P1 and P2 and on the side of the appellant/husband, neither any witness was examined nor any document was marked.

9. The Family Court, on analysing the oral and documentary evidence concluded that even though the appellant alleged that at the time of hospitalisation of his mother the respondent did not assist her, the appellant did not implead his mother or examined her to prove the said allegation. The further allegation that the father of the appellant was assaulted by the respondent, her parents, relatives and unknown persons whereby his father sustained grievous injuries on his face was also not substantiated by any oral and documentary evidence. The further allegation that after the reunion of the appellant and the respondent on 16.11.2008 when the respondent was taken for treatment to Kalpana Women Centre for a check up, the respondent left the clinic without any intimation and stayed in her parents house was also not proved by any material evidence. In effect, the Family Court disbelieved the allegation of the appellant

that he was subjected to matrimonial cruelty by the respondent. The Family Court also concluded that the averments made in the Original Petition filed by the appellant for dissolution of marriage are generic in nature and they are not sufficient to hold that the appellant was subjected to matrimonial cruelty at the instance of the respondent. Consequently, the Family Court, dismissed the petition filed by the appellant for dissolution of marriage by the Judgment and Decree dated 05.12.2014. Thereafter, the Family Court allowed the petition filed by the respondent for restitution of conjugal rights, by Judgment and Decree dated 05.10.2015. Aggrieved by the same, the appellant has come up with these Civil Miscellaneous Appeals.

10. The learned counsel for the appellant would contend that the appellant, in the Original Petition, has clearly averred that the respondent had deserted his matrimonial company on and off. However, in the counter filed by the respondent, she has not specifically denied the averments relating to desertion. Further, the appellant in the Original Petition has categorically stated that the respondent, after a medical check up at Kalpana Women Centre, left to her parents house without any intimation to his mother who accompanied her, but this averment was not specifically denied by the respondent in the counter. By relying upon the cross-examination of the respondent, the learned counsel for the appellant would contend that the respondent has categorically admitted that after medical examination, the Doctors advised her to take rest and therefore, she was sent along with her parents to her parents home. However, according to the counsel for the appellant, such an averment was not made by the respondent in the counter in HMOP No. 719 of 2011 and the deposition of RW1 is nothing but an after thought besides a clear admission of the fact that she deserted the matrimonial company of the appellant without any prior intimation. Therefore, according to the counsel for the appellant, the appellant has clearly proved that the desertion of the respondent is intentional whereby he was subjected to matrimonial cruelty.

11. The learned counsel for appellant would further contend that even in Ex.P3, notice dated 18.09.2010 sent by respondent, she did not ask for reunion, rather, she wanted the jewels to be returned to her. Even in the counter filed by respondent in HMOP No. 719 of 2011, she did not make any whisper that she is ready and willing to join the matrimonial company of appellant, rather, she only made reference to DVAC No. 15 of 2011 for return of jewels. When HMOP No. 719 of 2011 filed by appellant was taken up for trial, during cross-examination, she filed HMOP No. 876 of 2013 for restitution of conjugal rights, which would make it clear that she has no intention to join the matrimonial company of the appellant.

12. The learned counsel for the appellant would further contend that the appellant in his Original Petition in HMOP No. 719 of 2011 has made reference to the fact that on 16.05.2008, the respondent, along with his parents, relatives and unknown persons have assaulted his father and he sustained serious injuries on his face. The appellant's father was therefore admitted in V.G. Hospital, Thudiyalur, Coimbatore, where his statement was recorded by the police authorities. Further, the appellant has categorically stated that the respondent threatened the appellant that she would commit suicide by consuming tablets. Such allegations made by the appellant have not been specifically denied by the respondent either in her counter or in her deposition. The Family Court, however, did not consider these aspects properly while dismissing the Original Petition filed by the appellant for dissolution of marriage.

13. Above all, the learned counsel for the appellant would contend that the appellant and the respondent are residing separately for the past ten years and they are accustomed to reside separately. The long and continued separation of the appellant and the respondent had virtually resulted in irretrievable breakage of marriage and on that ground, the learned counsel for the appellant prayed for setting aside the orders passed by the Court below. In support of this contention, the learned counsel for the appellant relied on the Division Bench of this Court in the case of V.M. Jawahar Lal vs. K.A. Sheela reported in (2018) 3 CTC 31 to contend that the matrimonial relationship between the appellant and the respondent had strained and there is little or no scope for their union. The learned counsel for the appellant therefore prayed for setting aside the order passed by the Family Court by allowing these appeals.

14. Countering the submissions of the counsel for the appellant, the learned counsel for the respondent would contend that the averments, based on which the appellant has filed the Original Petition for dissolution of the marriage on the ground of cruelty are bald, vague and not specific. The appellant has failed to prove that the desertion of the respondent from the matrimonial home was intentional and without just or sufficient cause. In fact, the respondent has clearly stated that on 16.08.2008, the appellant and his mother have driven her out of the matrimonial home which compelled her to give a complaint to the All Women Police Station, Thudiyalur, Coimbatore on 17.05.2008 and on the basis of such a complaint, an enquiry was conducted during which the appellant sought time till 25.05.2008 to take the respondent back to the matrimonial home. However, without taking the respondent back to the matrimonial home, the appellant has filed HMOP No. 1021 of 2008 before the Family Court for dissolution of the marriage. In fact, only after filing HMOP No. 1021 of 2008, at the instance of the elders and

well wishers of both sides, the appellant had taken the respondent back to the matrimonial home on 16.11.2008. This itself would amply make it clear that the intention of the respondent is not to stay in her parents house but to join the matrimonial company of the appellant. The averments that the respondent threatened the appellant that she would commit suicide by consuming the pills was specifically denied by the respondent in the counter affidavit. Further, the appellant had falsely averred that the respondent, his relatives and unknown persons assaulted the father of the appellant and he sustained injuries on his face. Even though it was stated that the statement of the appellant's father was recorded by the police officials in the hospital, the appellant has not produced any documentary evidence to substantiate the same. According to the counsel for the respondent, the appellant did not substantiate that he was subjected to matrimonial cruelty at the instance of the respondent. The respondent has separately filed HMOP No. 876 of 2013 for restitution of conjugal rights in which she had categorically expressed her intention to join the matrimonial company of the respondent. The respondent was always ready and willing to join the matrimonial company of the appellant along with the minor child. At any rate, the allegations made in the original petition filed by the appellant will not be sufficient to prove that the appellant was subjected to matrimonial cruelty by the respondent. The Family Court, on perusal of the oral and documentary evidence has rightly dismissed the Original Petition filed by the appellant for dissolution of marriage and allowed the Original Petition filed by the respondent for restitution of conjugal rights. The learned counsel therefore prayed for dismissal of the appeals.

15. We have heard the counsel for both sides and perused the materials placed on record. As we have dealt with the factual matrix of the case in detail, we refrain ourselves from dealing with the same any further in this judgment. However, certain facts which are required for disposal of these appeals alone are dealt with hereunder.

16. The appellant has filed the Original Petition No. 719 of 2011 for dissolution of the marriage solemnised between him and the respondent on 02.03.2008 on the ground of cruelty. Therefore, it is required to be examined as to whether the appellant has proved that he was, in fact, inflicted with matrimonial cruelty by the respondent.

17. In order to prove that the appellant was subjected to matrimonial cruelty, certain instances were cited by him. One of the instances alleged by the appellant is that on 16.05.2008, due to matrimonial dispute between the appellant and the respondent, the respondent, her parents, relatives and unknown persons barged into the matrimonial home and assaulted his

father and he had sustained grievous injuries on his face. It is further alleged by the appellant that the father of the appellant was given treatment at V.G. Hospital, Thudiyalur and during the course of his hospitalisation, the police authorities from Thudiyalur have recorded a statement. However, it is not known as to whether a case has been registered on the basis of the so-called statement given by the father of the appellant at the hospital or not. There was no document filed by the appellant to substantiate this allegation. The documents filed by the appellant in HMOP No. 719 of 2011, as Exs. P1 to P5 are (i) Marriage invitation (ii) marriage registration certificate (iii) notice dated 19.08.2010 sent by the respondent (iv) reply given by the appellant on 05.10.2010 and (v) the Petition filed by the respondent in D.V.A. Case No. 15 of 2011. Except these documents, the appellant has not filed any other document to substantiate his averment. If really the father of the appellant was assaulted by unknown persons brought by the respondent during the course of his hospitalisation, his statement could have been recorded by the police officials attached to Thudiyalur Police Station and the appellant could have filed some document to substantiate the same. It is also to be stated that in the Original Petition, the appellant did not state as to what had happened after the statement of his father was recorded by the police official attached to Thudiyalur Police Station or whether any action has been taken thereof or not. The averments in this regard are not only bald but bereft of any material particulars. Therefore, this Court concludes that the appellant did not prove that on 16.05.2008 his father was assaulted by unknown men brought by the respondent. Therefore, this instance cited by the appellant to prove that he was subjected to matrimonial cruelty has to be rejected.

18. Yet another instance cited by the appellant to show that he was subjected to matrimonial cruelty is that on 19.04.2008, his mother was hospitalised for cardiac ailment as an in-patient at KTVR Hospital and subsequently she got admitted on 21.04.2018 at Ramakrishna Hospital, Coimbatore, but during such hospitalisation, the respondent did not bother to come to the hospital to look after his mother. This according to the appellant has caused him acute mental agony, pain and disturbance and it amounts to matrimonial cruelty. First of all, to prove that his mother was hospitalised on 19.04.2008, the appellant did not produce any medical records. Further, as pointed out by the trial Court, the appellant ought to have examined his mother to substantiate this averment, but the appellant did not examine his mother. Therefore, we hold that the appellant/husband has not substantiated this averment as well, to prove that he was subjected to matrimonial cruelty.

19. The other instance cited by the appellant is that when the respondent was pregnant, she was taken to Kalpana Women Centre for a check up and on that day, the respondent, without even intimating his mother, who accompanied her, had left the clinic and went to her parents house. In this regard, we have perused the cross-examination of the respondent wherein, she has stated that as per the advice of the Doctor, she was sent to her parents house, meaning thereby, the respondent was allowed to go to her parents house by the appellant. In any event, we do not see any significance in this averment made by the appellant to conclude that he was subjected to matrimonial cruelty at the instance of the respondent.

20. It is the contention of the counsel for the appellant that the respondent has no intention to join the matrimonial home. By referring to the notice dated 18.09.2010 sent by the respondent and the case in D.V.A.C No. 15 of 2011 filed by her before the Judicial Magistrate No.I, Coimbatore, it was contended that the respondent only demanded for return of jewels which belonged to her and this would amply show her intention to withdraw herself from the matrimonial home. We are not inclined to accept this submission of the counsel for the appellant. The respondent, in the counter, has clearly stated that she learnt that the appellant wilfully and intentionally allowed his parents and other family members to use the her personal belongings and therefore, she was constrained to send the notice dated 18.09.2010 followed by filing D.V.A.C. No. 15 of 2011 for return of articles. By mere filing of D.V.A.C. No. 15 of 2011 for return of the personal belongings of the respondent, it cannot be construed that the respondent intended to withdraw herself from the matrimonial relationship of the appellant and his family. It was a separate action initiated by her to safeguard her personal belongings and it cannot be construed as an attempt on the part of the respondent to withdraw herself from the matrimonial relationship with the appellant.

21. The other allegations of the appellant that the respondent threatened the appellant that she would commit suicide with a chunk of tablets in her hand and also in not allowing the appellant and his family members to have a glimpse of the minor child etc., were specifically denied by the respondent in the counter as well as in her deposition. Further, on reading the entire averments made by the appellant in OP No. 719 of 2011 filed by him for dissolution of the marriage, we are of the view that the averments made therein are not such that they warrant dissolution of the marriage between the appellant and the respondent. The averments made by the appellant are generic and not specific, besides they are insufficient to hold that he was subjected to matrimonial cruelty at the instance of the respondent. The Family Court, on appreciation of the oral and documentary evidence has come to a

correct conclusion that the averments in the Original Petition filed by the appellant are bald and vague and they do not come within the scope and ambit of cruelty as defined under Section 13 (1) (i-a) of The Hindu Marriage Act. We are in full agreement with such a conclusion arrived at by the Family Court.

22. In the result, we confirm the order dated 05.10.2015 passed in HMOP No. 876 of 2013 and the order dated 05.12.2014 passed in HMOP No. 719 of 2011, on the file of Additional Principal Judge, Additional Family Court, Coimbatore. The Civil Miscellaneous Appeals are dismissed. No costs.

Sd/-

Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

rsh

To

1) The Additional Principal Judge
Additional Family Court
Coimbatore

2) The Record Keeper,
VR section, High Court, Madras. (2 copies)

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vide SR No.73658, 73659

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CMA Nos. 321 & 2273/2016

ak(co)

ssm (14/12/2018).

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