

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27-03-2018

CORAM:

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

Civil Miscellaneous Appeal No. 3646 of 2011

Loganathan ... Appellant/petitioner

Versus

K. Selvi ... Respondent/Respondent

Appeal filed under Section 28 (1) of The Hindu Marriage Act, 1955 read with Section 19 of The Family Court Act against the Judgment and Decree dated 05.09.2011 made in H.M.O.P. No. 350 of 2006 on the file of Family Court, Coimbatore.

For Appellant : Mr. N. Manokaran
For Respondent : Mr. P.M. Duraiswamy

JUDGMENT

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

The appellant/husband has filed the present appeal aggrieved by the Judgment and Decree dated 05.09.2011 made in H.M.O.P. No. 350 of 2006 on the file of Family Court, Coimbatore, by which the Original Petition filed by him for dissolution of the marriage solemnised between him and the respondent on 05.10.1990, on the ground of cruelty, was dismissed.

2. As per the averments in the Original Petition, the marriage between the appellant and the respondent was solemnised on 05.10.1990 as per Hindu rites and customs and due to such wedlock, a son and daughter were born. According to the appellant, from the beginning of the marriage, the respondent was in the habit of demanding more money from him to meet her luxurious expenses. When the appellant used to politely refuse to accede to the demand of the respondent by stating that she has to adjust her needs within his income, the respondent would exhibit wild and unruly behaviour. Further, the appellant came to know that the respondent had received huge amount from the neighbours promising them to secure a job but failed to honour her promise. Therefore, on 10.02.2004, the neighbours thronged his house and demanded the respondent to repay the amount. On such demand, the respondent executed a promissory note on 10.02.2004 in favour of one Mythili promising to repay the sum of Rs.12,000/-

received from her. Similarly another promissory note was executed by the respondent in favour of one Sumathi and Sundari from whom the respondent had received 2 ½ sovereigns of jewels promising to secure a job for them. Even the amount as promised by the respondent was not repaid by her, with the result, a police complaint was given by the aforesaid persons before the Inspector of Police, Singanallur Police Station based on which an enquiry was conducted. During the course of such enquiry, the appellant was made and compelled to agree to repay the amount to the claimants, even though he was not at fault. It is not known as to how and in what manner the respondent spent the amount which she received from her neighbours. In any event, owing to the act of the respondent, the appellant was subjected to shame and degradation in the midst of his neighbours. Whenever the aforesaid attitude of the respondent was questioned, the respondent quarrelled with the appellant and would leave the matrimonial home to her parents house. Further, the respondent has given a false complaint against the appellant during April 2006 before the Peelamedu Police Station and Singanallur Police Station based on which the appellant was forced to go to the police station for an enquiry. It is also stated that on and from 09.03.2004, the respondent is residing separately and she is not willing to rejoin the appellant in the matrimonial home. According to the appellant, his son is staying with him while the daughter is staying with the respondent. In fact, the respondent went to the School where the son is studying, created an unpleasant scene there, with the result, the school authorities at Sowripalayam issued transfer certificate to his son and he was admitted in another school. In the above circumstance, the appellant sent a notice dated 18.04.2006 to the respondent calling upon her to give her consent to file a petition for dissolution of marriage by mutual consent. On receipt of the notice, the respondent issued a reply notice dated 20.04.2006 containing false and incorrect averments. Therefore, the appellant has filed the instant petition for dissolution of the marriage on the ground of cruelty.

3. Repudiating the averments contained in the Original Petition, the respondent has filed a counter affidavit contending that the marriage between the appellant and the respondent was a love marriage and it was solemnised on 05.10.1990 at Pateeswaran Temple, Perur, Coimbatore. However, after the marriage, the respondent was treated badly by the parents of the appellant on the ground that she belonged to a different caste and that she did not bring in any dowry at the time of marriage. Therefore, from the beginning of the marriage, the respondent was subjected to untold mental agony and hardship, however, the respondent led the matrimonial life patiently. According to the respondent, on 06.12.1992, a male child by name Indraprasadh was born and on 03.11.1995, a female child Chandravadhana was born. Even after the birth of the children, the appellant and the respondent were living happily for some time, however, thereafter, the appellant had grossly ignored the

welfare of the respondent and the children. In fact, the parents of the appellant very often scolded the respondent by stating that at the time of marriage, the respondent did not bring any sreedhana properties as per their customs and thereby the life of their son has been ruined. Thus, according to the respondent, it is she who was subjected to matrimonial cruelty at the instance of the appellant and his parents. The parents of the appellant also very often instigated the appellant to obtain a decree of divorce through the competent Court of law against the respondent so that he can marry another girl. In this context, there was a quarrel between the appellant and the respondent. On 02.11.2014, due to a wordy quarrel, the appellant had driven the respondent and the minor daughter out of the matrimonial home and they have taken shelter in the parents house of the respondent. Thereafter, the respondent went to the matrimonial home to meet the appellant and the minor son who is in the custody of the appellant, but the respondent was not permitted to enter into the matrimonial home. Therefore, on 15.11.2014, the respondent was constrained to give a complaint to the B-7, All Women Police Station based on which an enquiry was conducted and the appellant was advised to take back the respondent and the minor daughter to the matrimonial home. Accordingly, the respondent and the minor daughter were taken back by the appellant, but two weeks thereafter, once again, the appellant had driven the respondent and her daughter out of the matrimonial home. Subsequently, as per the advise of the elders, the respondent and the minor daughter were taken back to the matrimonial home. However, once again, on 26.03.2006 the respondent and the minor daughter were driven out of the matrimonial home. While so, on 18.04.2006, the appellant sent a notice to the respondent seeking her consent to be given for the dissolution of marriage for which she has issued a reply notice on 20.04.2006 expressing her intention to rejoin the matrimonial home. According to the respondent, she is always ready and willing to join the appellant in the matrimonial home, but it is the appellant who is not intending to take her and the minor daughter back to the matrimonial home. Therefore, the respondent prayed for dismissal of the Original Petition.

4. Before the Family Court, on behalf of the appellant, the appellant examined himself as PW1, one Chandrasekaran was examined as PW2 and Exs. P1 to P9 were marked. On behalf of the respondent, the respondent examined herself as RW1 along with two other witnesses as Rws 2 and 3 and marked Exs. R1 to R8. The Family Court, on consideration of the oral and documentary evidence held that the allegation that the respondent borrowed amount from the neighbours under the guise of securing employment to them is not proved and that the respondent borrowed amount with the knowledge of the appellant for medical expenses for the family. The Family Court, by placing reliance on Ex.R1, legal notice sent on behalf of the appellant, concluded that if really the respondent borrowed amount from neighbours promising to get

employment, the appellant would have highlighted it in his legal notice dated 16.12.2004, but nothing has been whispered therein. Further, RW3, a neighbour in the locality was examined who had stated that it was the appellant and his parents who have subjected the respondent to matrimonial cruelty by demanding dowry and driven her and the female daughter out of the matrimonial home. Furthermore, the Family Court relied on Ex.P8, receipt issued in the name of the appellant for having paid the fine amount before the Criminal Court. While dealing with Ex.P8, the Family Court observed that on 22.05.2006 the appellant went to the matrimonial home but she was physically assaulted and driven out of the home and on witnessing the same, a Constable attached to B-5 Police Station recorded the statement of the respondent and registered a case against the appellant for the offence under Section 75 (1) (c) of Tamil Nadu City Police Act read with Section 324 of IPC. After investigation, a charge sheet was filed in C.C. No.620 of 2006 against the appellant and ultimately, the criminal case ended in payment of fine by the appellant. By placing reliance on the above case, the Family Court concluded that it was the appellant who caused matrimonial cruelty to the respondent and dismissed the Original Petition.

5. The learned counsel for the appellant would contend that the Family Court did not take note of the oral evidence of PW1 and 2 in the proper perspective. On the other hand, the Family Court had taken note of the deposition of RW1 to 3 as gospel truth and concluded that the respondent was subjected to matrimonial cruelty and that her desertion is wholly justified. The Family Court did not consider the fact that from 09.03.2004, the appellant and the respondent are residing separately and that the matrimonial relationship between them had virtually snapped. While so, the Family Court ought to have granted a decree of divorce on the ground of irretrievable breakdown of marriage. According to the counsel for the appellant, due to the long and continued separation, the matrimonial relationship between the spouse has come to an end and therefore, the Court below ought to have granted a decree of divorce.

6. Per contra, the learned counsel for the respondent would contend that the respondent was always ready and willing to live with the appellant. In fact, on 22.05.2006 when the respondent went to the matrimonial home she was not only prevented from entering the house, but physically assaulted and driven out of the home by the appellant and in connection with this incident, a case was registered against the appellant under Section 75 (1) (c) of Tamil Nadu City Police Act read with Section 324 of IPC and it resulted in imposition of fine on the appellant. The Family Court, by relying upon this incident and also the deposition of RW3, an independent witness, has come to the conclusion that it is the respondent who was subjected to matrimonial cruelty at the instance of the appellant. The Family Court also analysed the evidence made available in detail and come to the correct

conclusion that the appellant did not substantiate the various allegations made by him in the Original Petition. We do not find any reason to interfere with such a finding rendered by the Family Court, on appreciation of the factual matrix.

7. We have heard the learned counsel for both sides and perused the materials placed on record. It is an admitted fact that the marriage between the appellant and the respondent was solemnised on 05.10.1990 and due to the wedlock, two children were born. According to the appellant, the respondent wanted to lead a luxurious life for which she borrowed money from the neighbours under the false pretext of securing employment to them. In this context, the Family Court, on analysis of the Deed of Undertaking, Ex.P2 executed by the respondent in favour of one Mythili concluded that it was an unsigned xerox copy without the date indicated therein. Similarly, Ex.P3, promissory note was also an unsigned xerox copy executed by the respondent. On perusal of Exs. P2 and P3, the Family Court concluded that there is no indication that those documents were executed by the respondent for securing employment, but they were executed for having borrowed money for family necessity. Thus, the Family Court, on analysis of Ex.P2 and P3 concluded that the amount was borrowed by the respondent to meet the urgent family expenses and not as stated by the appellant. Above all, the Family Court rightly pointed out that in Ex.R1, legal notice dated 16.12.2004 sent on behalf of the appellant, the appellant did not mention the aforesaid acts alleged against the respondent with respect to receipt of money allegedly to get employment to the neighbours. The Family Court also further found that Ex.P8, fine receipt issued in the name of the appellant would speak volumes about his conduct in driving the respondent from the matrimonial home after physically assaulting her. In such view of the matter, we are of the view that the Order of the Family Court requires no interference and that the Family Court has reached a correct conclusion to dismiss the Original Petition filed by the respondent herein.

8. As far as the contention of the counsel for the appellant that both the appellant and respondent are residing separately from 2004 and such a long and continued separation had rendered the matrimonial relationship an otiose, we are not inclined to accede to such submission. Merely because the appellant and the respondent are residing separately from 2004 due to a matrimonial dispute or otherwise due to the pendency of the Original Petition before the Family Court and this Court, it will not be a ground to nullify the matrimonial relationship between the spouse. This is more so that the appellant did not file the Original Petition on the ground of desertion, but he only filed it on the ground of cruelty, which he failed to substantiate in a manner known to law. In such circumstances, we are of the view the order passed by the Family Court is wholly justified.

9. For all the above reasons, the Civil Miscellaneous Appeal fails and it is dismissed. No costs.

Sd/-

Assistant Registrar(CS v)

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Sub Assistant Registrar

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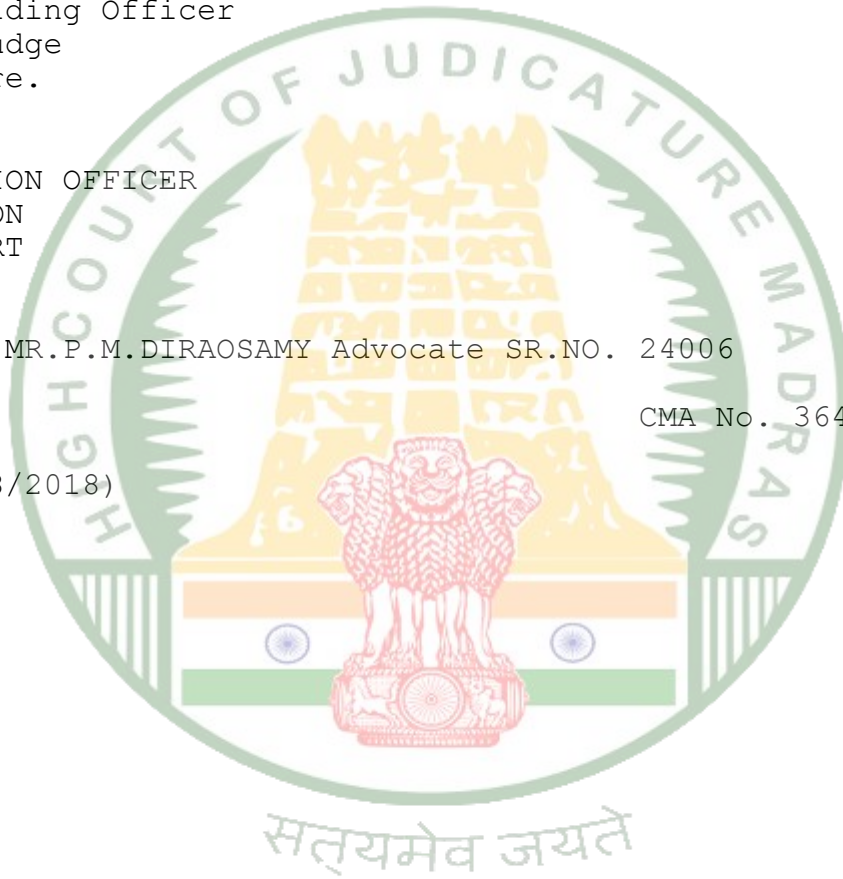
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Family Judge
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