

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.01.2018

Pronounced on : 13-04-2018

CORAM:

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

Civil Miscellaneous Appeal No. 668 of 2011

M. Sarathchandran ... Appellant/Petitioner

Versus

M. Jayalakshmi Sarath Chandran ... Respondent/Respondent

Appeal filed under Section 19 of The Family Courts Act against the Order dated 08.12.2010 passed in HMOP No. 2261 of 2008 on the file of Principal Family Court, Chennai.

For Appellant : Mrs. V.S. Usha Rani
For Respondent : Mrs. D. Kamachi

JUDGMENT

R. Subbiah, J

The appellant is the husband and the respondent is his wife. The appellant has filed this Civil Miscellaneous Appeal as against the Order dated 08.12.2010 passed in HMOP No. 2261 of 2008 on the file of the Principal Family Court, Chennai, by which the HMOP No. 2261 of 2008 filed by him under Section 9 of The Hindu Marriage Act for restitution of conjugal rights was dismissed.

2. It is the case of the appellant that his marriage with the respondent was solemnised on 24.10.1969 at Virudhunagar according to Hindu rites and customs. After the marriage, the appellant and the respondent lived together happily as husband and wife for about 12 years at Tiruchirapalli and 17 years at Ahmed Nagar, Maharashtra. In other words, the couple lived together for about 29 years peacefully and happily. Due to the wedlock between the appellant and the respondent, a male and a female child were born. It is the case of the appellant that from the date of marriage, the parents of the respondent and her family members, especially the maternal uncle of respondent, interfered with each and every one of their family affairs

unnecessarily which ruined the matrimonial life between him and the respondent. Even though the appellant advised the respondent to limit herself from divulging the family affairs that had been taking place in the matrimonial home to her parents and relatives, she did not desist herself from interacting with her family members about the incidents that are taking place in the matrimonial home. According to the appellant, during the course of his new employment he took up at Ahmed Nagar, Maharashtra, the respondent and his children accompanied him to Ahmed Nagar. However, in the year 2000, the appellant was compelled to leave his wife and children at Chennai for the sake of education of his children by temporarily setting up a separate house for the stay of his wife and children. While so, during August 2000, the father of the respondent died and therefore, the respondent accompanied her mother along with the children and stayed with her mother. During such stay, the appellant was not permitted to meet the respondent or the children for the reasons best known to respondent. The appellant had taken several steps to meet the respondent and the children but it went in vain. It is the specific grievance of the appellant that inspite of his objection and opposition, his daughter was given in marriage to a groom by the respondent and her mother and ultimately his daughter's matrimonial life came to an end by way of decree of divorce passed by the competent Family Court. In any event, the respondent is residing separately from 07.03.2010 along with her mother and the children. In fact, the respondent insisted the appellant to resign his job at Ahmed Nagar, Maharashtra and to come down to Chennai permanently. Accordingly, the appellant also resigned his job but inspite of the same, the respondent failed and neglected to join the appellant. According to the appellant, the desertion of the respondent from the matrimonial company of the appellant is without any just and sufficient cause. The appellant was 62 years at the time instituting the Original Petition. According to the appellant, at such an advanced age, he needed the care and support of the respondent and the children. The appellant had sent a notice dated 16.03.2001 calling upon the respondent to come and join him in the matrimonial home. On receipt of the notice dated 16.03.2001, a reply notice was sent on 23.04.2001 containing false and incorrect averments. Therefore, the appellant has filed the petition under Section 9 of The Hindu Marriage Act for restitution of conjugal rights.

3. Opposing the Original Petition filed by the appellant, the respondent has filed a counter affidavit contending inter alia that the marriage between the appellant and the respondent was solemnised on 24.10.1969 in Subramaniya Swamy Devasthanam Thirumana Mandapam, Virudhunagar, according to Hindu rites and customs. Both the appellant and the respondent resided together

for 29 years jointly, however, the matrimonial life was not happy and that the respondent was subjected to sheer harassment by the appellant. According to the respondent, the appellant ill-treated her and her family members and it led to several quarrel between them. The appellant demanded a sum of Rs.5 lakhs from the parents of the respondent besides he had withheld with him 50 sovereigns of gold jewels presented to the respondent at the time of marriage. The desertion of the respondent from the matrimonial company of the appellant was not voluntary, rather, the respondent was made to part his company due to sheer harassment, ill-treatment and demand for money. The appellant never attempted to rejoin the respondent and it was the respondent who had taken several steps to rejoin the appellant but they went in vain. The respondent therefore prayed for dismissal of the Original Petition.

4. Before the Family Court, the appellant examined himself as PW1 and Exs. P1 to P5 were marked. On behalf of the respondent, she examined herself as RW1 and marked Exs. R1 and R2. The Family Court, upon considering the oral and documentary evidence, concluded that the appellant had issued a notice dated 16.03.2001 calling upon the respondent to come and live with him. On receipt of the notice, a reply dated 23.04.2001 was sent by the respondent complaining that she was subjected to matrimonial cruelty by the appellant. In spite of specific averments made by the respondent in the reply notice dated 23.04.2001, the appellant did not issue a reply repudiating those averments. Furthermore, the present Original Petition has been filed by the appellant seven years after the reply notice dated 23.04.2001 sent by the respondent. The Family Court also found that the appellant and the respondent are residing separately from 2000 and there is no scope for their reunion. Therefore, the Family Court dismissed the Original Petition filed by the appellant.

5. The learned counsel appearing for the appellant would submit that the marriage between the appellant and the respondent was solemnised on 24.10.1969 and they lived together till 2000. The appellant was employed in Ministry of Defence, having office at Trichy, Tamil Nadu where he was employed till 1998 and thereafter, he resigned the job. After resigning the said job, the appellant got a job in a factory at Ahmed Nagar, Maharashtra and therefore, he went to Ahmed Nagar and settled along with his wife, the respondent and his two children in the year 1998. During 2000, since the daughter of the appellant intended to pursue a Post Graduate Degree, the appellant came down to Chennai, made arrangement for temporary stay of the respondent and the two children and left to Ahmed Nagar. While so, during 2001, the father of the respondent died and therefore, the respondent accompanied her mother and the two

children and the appellant also did not object to it. However, during the course of her stay with her mother, the appellant could not contact the respondent and the mother of the respondent remained as a stumbling block for the appellant to establish contact with his wife, the respondent herein. Further, for re-joining the appellant, the respondent imposed a condition that the appellant has to resign his job at Ahmed Nagar, Maharashtra and to settle down at Chennai. Accordingly, the appellant also resigned his employment and came down to Chennai. Even thereafter, the respondent refused and neglected to join the appellant and therefore, the appellant sent a notice dated 16.03.2001 calling upon the respondent to come and live with him. On receipt of the notice, a reply dated 23.04.2001 was sent by the respondent containing untenable reasons. Thereafter, the appellant has filed the instant Original Petition under Section 9 of The Hindu Marriage Act for restitution of conjugal rights. Even though in the reply notice sent by the respondent, it was merely stated that the appellant had demanded dowry and subjected her to matrimonial cruelty, there is no evidence produced by the respondent to substantiate the same. According to the learned counsel for the appellant, the desertion of the respondent is without any reasonable or sufficient cause, while so, the Court below ought not to have dismissed the petition filed by the appellant for restitution of conjugal rights and it calls for interference by this Court.

6. The learned counsel for the respondent, on the other hand, would contend that the appellant did not discharge his duties as a dutiful Hindu husband. The appellant did not provide any care and support to the respondent and the children and he remained away from the company of the respondent and the children for a long time. It was also contended that the respondent did not take any steps to perform the marriage of his daughter even after she attained 29 years of age and thereby the appellant failed and neglected to discharge his solemn duty. Even though the respondent had arranged for the marriage of his daughter, the appellant failed and neglected to contribute any amount for the marriage and thereby subjected the respondent to sheer harassment and humiliation. In any event, both the appellant and the respondent are residing separately for more than 18 years and the matrimonial relationship between them had broken irretrievably beyond repair. The daughter was given in marriage and the son is residing with the respondent now. Both the appellant and the respondent are in their advanced age and therefore, at this stage, there is no possibility for a re-union. In support of this contention, the learned counsel appearing for the respondent would rely upon the decision of the Honourable Supreme Court in (Sukhendu Das vs. Rita Mukherjee) Civil Appeal No. 7186 of 2016 dated 09.10.2017 wherein it was held in Para No.8 as follows:-

"8. This Court in a series of judgment has exercised its inherent powers under Article 142 of The Constitution for dissolution of a marriage where the Court finds that the marriage is totally unworkable, emotionally dead, beyond salvage and has broken down irretrievably, even if the facts of the case do not provide a ground in law on which the divorce could be granted (Manish Goel vs. Rohini Goel). Admittedly, the appellant and the respondent have been living separately for more than 17 years and it will not be possible for the parties to live together and there is no purpose in compelling the parties to live together...."

7. Reliance was also placed on the decision of the Honourable Supreme Court in (K. Srinivas Rao vs. D.A. Deepa) (K. Srinivasa Rao vs. D.A. Deepa) reported in (2013) 5 Supreme Court Cases 226 wherein the Honourable Supreme Court held that when the spouses are residing separately for a considerable length of time and such a long separation is one of the valuable grounds for granting a decree of divorce. According to the counsel for the respondent, in the present case also, the appellant and the respondent are residing separately since 2000 and thus she prayed for dismissal of the Civil Miscellaneous Appeal.

8. Keeping the submissions made by the learned counsel for both side, we have carefully gone through the materials placed on record. It is seen from the records that marriage between the appellant and the respondent was solemnised on 24.10.1969 and they lived together till 2000. Due to the wedlock, they were blessed with two children and they have now grown up. Even at the time of instituting the Original Petition in the year 2008, the appellant was 64 years and the respondent was 57 years. According to the appellant, he could not have access to see the respondent and the minor children and he was unreasonably prevented from even seeing his children. On the contrary, the respondent would contend that the appellant did not care to look after her and the children and that he did not even contribute for the marriage of the daughter. The respondent would further contend that even during the time when the appellant and the respondent were residing together, the appellant subjected her to matrimonial cruelty by demanding dowry from her parents. In this context, the Family Court relied on the notice dated 16.03.2001 sent by the appellant calling upon the respondent to come and live with him. A reply dated 23.04.2001 was sent by the respondent narrating the humiliation and harassment to which she was subjected to during the course of matrimonial life. The Family Court rendered a specific finding that the appellant did not deny the averments made in the reply notice dated 23.04.2001 by sending a

rejoinder. Further, seven years thereafter, the appellant has instituted the Original Petition under Section 9 of The Hindu Marriage Act for restitution of conjugal rights. The Family Court also taken note of the long separation of the appellant and the respondent and refused to grant the relief of restitution of conjugal rights. As rightly pointed out by the Family Court, if the appellant was really interested in joining the respondent, he ought to have immediately filed the Petition for restitution of conjugal rights soon after receipt of the reply notice dated 23.04.2001 but for the reasons best known, the appellant remained silent without filing any such petition within a reasonable time. Furthermore, the appellant and the respondent have been residing separately atleast for 18 years since March 2000 and this long and continued separation of the appellant and the respondent rendered the matrimonial life an otiose. As held by the Honourable Supreme Court in the decisions relied on by the counsel for the respondent, no useful purpose will be achieved by directing re-union between the parties at this stage besides there is no purpose in compelling the parties to live together. In such view of the matter, we see no infirmity in the order passed by the Family Court in dismissing the petition for restitution of conjugal rights filed by the appellant.

9. In the result, we confirm the order passed by the Family Court we dismiss the Civil Miscellaneous Appeal filed by the appellant. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Family Judge
Chennai

2. The Section Officer,
VR Section, High Court,
Madras-104 (2 Copies)

+1cc to Mrs.V.S.Usha Rani, Advocate, S.R.No.27416

CMA No. 668 of 2011

NRL(CO)
CS/11/06/18