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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.03.2018
Delivered on: 29.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.S.A.No.27 of 2007

Thenmozhi

... Appellant/Appellant/Respondent

Vs.

Manivannan

...Respondent/Respondent/Respondent

PRAYER: Civil Miscellaneous Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment and decree made in C.M.A.No.43 of 2004, dated 27.07.2007 on the file of the learned Principal District Judge, Villupuram, confirming the judgment and decree made in H.M.O.P.No.64 of 2001, dated 10.08.2004 on the file of the Subordinate Court, Kallakurichi.

For Appellant	: M/s.P.Veena Suresh,
	For Mr.T.R.Rajaraman
For Respondent	: Prof.S.Krishnaswamy

JUDGMENT

This Civil Miscellaneous Second Appeal is filed against the judgment and decree passed in C.M.A.No.43 of 2004, dated 27.07.2007, on the file of the learned Principal District Judge, Villupuram, confirming the judgment and decree passed by the Sub Court, Kallakurichi, in H.M.O.P.No.64 of 2001, dated 10.08.2004.

2. The wife is the appellant and the husband is the respondent herein. The husband filed a petition for divorce on the grounds of desertion and cruelty. According to the husband, the wife is closely related to him even before the marriage. The marriage took place on 08.07.1976 and they begot three children. Because of the close relationship, his son has got genetical aberrations and consequent on which, mental problems. The wife, on the ill advice of her parents, insisted on him giving their daughter in marriage to her brother. The husband opposed the marriage on three aspects, namely; (i) They are very close relatives, which will cast upon the children born to them; (ii) His daughter was studying Plus Two and was only 19 years old and



her future prospects will be affected; (iii) the age difference between his daughter and his wife's brother was 15 years. But, on the night of 31.12.1998, the wife sent her daughter, without the knowledge and against the wishes of her husband, to her parental home and solemnized the marriage without his knowledge on the next day itself in the presence of her parents. Thereafter, due to development of controversy between the couple, she lodged complaints against her husband before the Revenue and police officials for dowry harassment and second marriage. The husband was forced to attend the enquiries conducted by the revenue and police officials and was put to harassment. A suit for maintenance was also filed by the wife in O.S.No.122 of 2001 on the file of Sub Court, Kallakurichi. With this factual background, the husband filed a petition for divorce on the grounds of desertion and cruelty.

3. The wife denied all the allegations and would submit that her daughter had married her maternal uncle on her volition and that she was ignorant of the marriage. Only because the husband had illicit intimacy with another lady, which was opposed by her, he filed a petition for divorce. She was driven out of her marital home and never harassed the husband. The allegations of cruelty as well as desertion were not made out and, therefore, the divorce petition was sought to be dismissed as not maintainable.

4. The Trial Court and the lower Appellate Court have concurrently found that the husband has proved desertion and cruelty at the hands of the wife and granted divorce in favour of the husband, against which, the present Civil Miscellaneous Second Appeal is preferred by the wife.

5. The appeal was admitted on the following substantial questions of law:

"1. When the husband having not substantiated the plea of cruelty through his evidence, still is the learned District Judge right in presuming cruelty while granting divorce?

2. When the husband spoke about the acts of the wife it created "Disturbance of mind", would it be sufficient enough to presume cruelty?"

6. The point now for consideration is whether the plea of cruelty is made out by the husband for granting divorce in his favour.

7. After going through the deposition of the witnesses, the Courts below have concurrently found that the wife was not driven away from her marital home, but, she left on her own at the mid night of 31.12.1998. Against the wishes of her husband,



she had sent her daughter to her parents' house for solemnizing her marriage with her younger brother. The objections of the husband that marrying a close relative is detrimental to the children born to his daughter, the career prospects of the daughter will be affected and she shall not marry a person who is 15 years older than her, were not at all considered and thrown to the wind by the wife.

8. At the first instance, the act of the wife in sending her daughter without the knowledge of the husband by itself will cause mental cruelty to the husband. Besides that, solemnizing a marriage in the absence of the father to a person who was rejected by her husband will amount to mental cruelty to the husband. The husband by the very same act would have been put to more harassment and ignominy in the Society. The wife, after leaving the matrimonial home, had lodged complaints against her husband and her son before the police and revenue officials. The lodging of complaints and the enquiry all proved by Ex.C.1. The husband, who was working as Public Officer, was made to undergo all these ordeals of facing enquiry before police as well as revenue officials, which would have caused mental and physical harassment. Further, the allegations of demand of dowry as well as the illicit intimacy with another lady would definitely cause on his dignity, character and reputation in the Society.

9. Apart from this, the Courts below have concurrently found that the wife used vulgar and vituperative language against her husband and his parents and made allegations of attempt to murder on them. She also filed a suit for partition and maintenance against her husband instead of taking steps for re-union. The letters written by the husband to the wife marked as Exs.R.1 and R.2 do not divulge the intention of the husband seeking dowry or any demand from his wife or her parents as alleged by the wife. Both the Courts below have found that the action of the wife from the beginning till the end subjected the husband to harassment and under mental stress and caused disrepute to him, would amount to cruelty.

10. The learned counsel for the appellant/wife would contend that the allegation of cruelty is not made out. But, in the considered opinion of this Court, giving his daughter in marriage to a person 15 years older than her against the wishes of the husband by itself amounts to mental cruelty. Further, lodging complaints against her husband, causing disrepute to his character, dignity and causing threat to his employment will certainly amount to cruelty.

11. In *Amaravathy v. R.A.Pakkirinathan* [1998 (II) CTC 385], it was held as under:

"Wife leaving husband quarrelling with him and



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giving complaint against husband, his mother, sister and cousin brother under Dowry Prohibition Act and making complaint to higher officials of husband - Husband seeking anticipatory bail and bail granted subject to condition that husband should sign at Nagapattinam Dowry Cell Police Station, every day - Husband suffering mental cruelty - Wife scolding husband and his mother in vulgar terms and creating scene resulting in gathering of neighbours - Wife is guilty of cruelty - Husband is entitled to decree of divorce."

12. This Court in A.Viswanathan vs. G.Lakshmi @ Seetha reported in 2006(4) T.L.N.J. Page 409 (Civil), has held as follows:

"The position of law in this regard has come to be well settled and declared that levelling disgusting accusations of unchastity and indecent familiarity with a person outside wedlock and allegations of extramarital relationship is a grave assault on the character, honour, reputation, status as well as the health of the wife. Such aspersions of perfidiousness attributed to the wife, viewed in the context of an educated Indian wife and judged by Indian conditions and standards would amount to worst form of insult and cruelty, sufficient by itself to substantiate cruelty in law, warranting the claim of the wife being allowed.

The parties are medical practitioners and allegations and counter allegations were made. It was held that, when the respondent gives priority to her profession over her husband's freedom, it points unerringly at disharmony, diffusion and disintegration of marital unity, from which the Court can deduce about irretrievable breaking of marriage.

It is not in dispute that the appellant and the respondent are living away for the last 14 years. It is also true that a good part of the lives of both the parties has been consumed in this litigation. As observed by this Court, the end is not in sight. The assertion of the wife through her learned counsel at the time of hearing appears to be impractical. It is also a matter of record that dislike for each other was burning hot."

"The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions and their culture and human values to which they attach importance. Each case has to be decided on its own merits.

"As we cannot but note, scurrilous, vituperative



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and scandalous allegations have been freely made by both the spouses against each other and since we found them to have been made by the parties without any justifiable foundation, we would have no hesitation in coming to the conclusion that the marriage has broken down irretrievably and irreparably beyond all prospects of resuscitation or restoration.

The Court held that the wife gave complaint to the police against the husband and son - constant harassment on account of these complaints - the family court not looked into the evidences based on the legal propositions and the established rule of law."

13. Both the Courts below have rightly arrived at a finding that the husband made out a case of cruelty at the hands of the wife and the wife has deserted him knowingly for achieving an ulterior object with a definite knowledge that it will lead to irreparable damage. The wife has also not taken any steps for re-union thereafter. They are living separately for more than 20 years. As held by the Hon'ble Supreme Court, denying cohabitation by itself amounts to mental cruelty. Therefore, this Court is of the view that the findings of the Courts below are based on sound legal evidence. Thus, the questions of law have no substance and are answered against the appellant/wife and the decree of divorce stands confirmed.

14. In fine, this Civil Miscellaneous Second Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

SML

To

1.The Principal District Judge,
Villupuram.

2.The Subordinate Court,
Kallakurichi.



3.The Section Officer,
VR Section, High Court, Madras.

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+1cc to Mr.T.R.Rajaraman, Advocate, S.R.No.42057

+1cc to Mr.S.K.Krishnaswamy, Advocate, S.R.No.42375

C.M.S.A.No.27 of 2007

NMI (CO)
GSP (12/09/2018)