

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.S.A.NO.33 OF 2010

Venkataraman ... Appellant/Respondent/Petitioner

Vs.

Lavanya
... Respondent/Appellant/Respondent

PRAYER: Civil Miscellaneous Second Appeal filed under Section 28 of the Hindu Marriage Act read with Section 100 CPC against the order and decreetal order dated 31.08.2010 made in CMA No.16 of 2006 on the file of the Principal District Judge, Villupuram District, Villupuram, reversing the order and decreetal order dated 20.12.2006 made in HMOP No.82 of 2002 on the file of the Principal Subordinate Judge, Tindivanam.

For Appellant : Ms.N.Mala

For Respondent : Mr.K.Govi Ganesan

J U D G M E N T

The petitioner / husband is the appellant before this Court. The appellant filed a petition for divorce on the grounds of cruelty and desertion. The Trial Court granted divorce and the Lower Appellate Court reversed the finding and dismissed the petition for divorce.

2. The Civil Miscellaneous Second Appeal was admitted on the following substantial questions of law:-

"(i) Whether the reversing judgment of the Lower Appellate Court is vitiated for reversing the well considered judgment and decree of the Trial Court ?

(ii) Whether the Lower Appellate Court was right in law in reappraising the entire oral evidence overlooking the well established principle of law that it does not enjoy the advantage of witnessing the demeanour of the witness which the Trial Court enjoys and as such unless and until it appears to the

Appellate Court that the Trial Courts appraisal of evidence suffers from material irregularity, the Appellate Court shall allow the finding of fact rendered by the Trial Court to prevail ?

(iii) Whether the reversing judgment and decree of the Trial Court is vitiated for misappropriation and misconception of the evidence on record ?

(iv) Whether the Lower Appellate Court failed to note that on the facts as born out by evidence the Appellant is entitled to decree for divorce both on the ground of cruelty and on the ground of irretrievable break down of marriage ? "

3. The marriage between the parties had taken place on 09.05.1996. Out of the wedlock, they got two children, in the year 1997 and 2000 respectively. It is to be noted that both the parties belong to the same place and the respondent/wife's mother lives two streets away from the matrimonial house of the respondent/wife. The respondent/wife was in the habit of staying in her mother's house frequently and used to come only during the day time to the matrimonial house. This was objected by the appellant/husband and his mother and due to the same, some quarrel ensued. The appellant/husband would also allege that the respondent/wife used to abuse him as well as his mother and pick up quarrel everyday. On one such occasion, the respondent/wife thrown the second child into the well to create bad image on the husband. Thereafter, the respondent/wife remained in her mother's house and refused to join the husband. Mediations were held on several occasions, but the respondent/wife refused to rejoin as her mother-in-law was harassing her. Unable to bear the mental agony, the appellant/husband filed a petition for divorce in the year 2002.

4. Per contra, the respondent/wife would deny all the allegations and contend that at the time of marriage, the educational qualification of the appellant/husband was only 10th standard. But, he suppressed the said fact and informed that he is a Graduate. The respondent/wife is a Graduate and employed in State Government. The appellant/husband and his mother demanded dowry and harassed her everyday. Both of them chased her out of the matrimonial house and therefore, she had to live with her mother. Her mother has mediated for re-union through several big people. But, the appellant/husband was stubborn and refused to take her back. Even today, she is willing to rejoin with her husband. Therefore, the divorce petition has to be dismissed.

5. When the matter was taken up for hearing, this Court referred the parties to mediation. Even though the parties appeared before the Mediation Centre, they could not arrive at a mutually agreeable settlement and therefore, it is now taken up for hearing.

6. From the perusal of the materials available before this Court, it is seen that there is no serious enmity between the appellant/husband and respondent/wife. From the evidence of the respondent/wife, it is seen that she used to visit her mother's house frequently and stayed there over night. It is also seen that she was employed in Government Employment Exchange as Junior Assistant. She used to travel to her office every morning and returned only in the evening. From the materials relied on, it is clear that the respondent/wife used to stay at her mother's place and not at matrimonial home. In her evidence, she would depose that she used to visit her husband's house now and then and she got the second child during the course of her visits. She underwent "C" Section (cesarean) for the birth of the second child. Therefore, she remained in her mother's house for long time and was taking long leave on the advice of the Doctors. Thereafter, she did not go back to her husband's house. Initially, the blame was put on the mother-in-law that she was harassing the respondent/wife. But the materials on record go to show that the mother-in-law passed away in 2011. Even after that, the respondent/wife did not rejoin the husband. The Trial Court granted divorce, but it was reversed by the Lower Appellate Court on the ground that there is a possibility of re-union, considering the young age of the parties. Even after dismissal of the divorce petition by the Lower Appellate Court, the respondent/wife did not join her husband. From the above, it is very clear that the respondent/wife has no intention for re-union.

7. The appellant/husband would state that he had always taken sincere efforts to bring her wife to matrimonial home. But she rejected the request. Even when he attempted to see the children, his wife used to beat them and torture them not to meet their father. In spite of the same, the appellant/husband paid maintenance for the children as well as for the respondent/wife. The denial of visitation rights caused severe mental torture to the appellant/husband.

8. From the evidence, it is further seen that the mother of the appellant/mother-in-law of the respondent had given jewels to her daughter-in-law and that they are well off. But the respondent/wife had a complex that the mother-in-law's family was trading in snuff powder and that her husband was not educated well. On the other hand, she is well educated and employed in a Government office. Even assuming that the mother-

in-law was crossing her and that there is no dispute between the husband and wife, the respondent/wife could have rejoined her husband after 2007 i.e., after the death of the mother-in-law. On the other hand, she would insist on claiming maintenance and not re-union.

9. It is also seen from the evidence that the mother of wife demanded Rs.2,00,000/- and preferred to live separately rather than rejoining.

10. In the meantime, it is seen that the respondent/wife has filed a suit for partition against her husband and her mother-in-law in the year 2002, which was later withdrawn.

11. It is also to be noted that during 2013, the appellant/husband met with an accident, but the respondent/wife did not care to attend on him or even to visit him. Thereafter, the husband also refused to rejoin and the mediations could not succeed, as the marriage had become emotionally dead and the parties have reached point of no return. From the above, it could be seen that the respondent/wife even though states that she is willing, despite several mediations by different Judges, is not actually interested in living with her husband and for the past 18 years, both of them are living separately. Therefore, it is clear that the respondent/wife had denied her husband the matrimonial bliss of living together, which amounts to cruelty.

12. Much persuasion is made relying on the incident that the respondent/wife had thrown her child into the well. Evidence of witnesses reveal that P.W.2 was the neighbour of the husband's house, who rescued the child from the well and would narrate in his evidence as to what happened on the fateful day. It is substantiated by the evidence of P.W.3, who would state that he knew that the incident had happened. In the said incident, it is seen that the respondent/wife had thrown her new born child to the well and it was rescued and sent to hospital. But the mother of the child, namely, the respondent/wife did not go to the hospital. When such a serious allegation was made against the respondent/wife, no attempts were made to deny the serious allegations and no efforts were taken not even suggestions, to disprove the same through cross examination. The Trial Court is the best Court to observe the demeanor of the witnesses. The Trial Court believed the witnesses and on observing the conduct of the respondent/wife, had come to a conclusion that such an incident had happened. The Lower Appellate Court, on the assumption that no mother would dare to kill her own child and thus, reversed the finding. Further, the evidence of P.W.4 would also go to show that the respondent/wife was not willing to rejoin her appellant/husband. Totality of the circumstances and the observation of the Trial Court would pose us to arrive at a

conclusion that the respondent/wife was not willing to rejoin the husband and also caused mental cruelty to him.

13. The Hon'ble Supreme Court in SUKHENDU DAS VS. RITA MUKHERJEE [2017 (9) SCC 632] has held as follows:

"8. This court in a series of judgments 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 v. 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 in 1 (2007) 4 SCC 511 [para 101 (xiv)] 2 (2010) 4 SCC 393 [para 11] matrimony [Rishikesh Sharma v. Saroj Sharma]. The daughter of the Appellant and the Respondent is aged about 24 years and her custody is not in issue before us. In the peculiar facts of this case and in order to do complete justice between the parties, we allow the Appeal in exercise of our power under Article 142 of the Constitution of India, 1950. "

14. Even though it is not a ground in law to grant divorce on the basis of long separation, when there is no likelihood of the appellant and the respondent living together and for all practical purposes, there is an irreparable break down of marriage, keeping the parties to stay in a dead marriage would itself constitute mental cruelty, as held by the Hon'ble Supreme Court in SAMAR GHOSH VS. JAYA GHOSH [2007 (4) SCC 511]. In the instant case, the denial of matrimonial bliss to the appellant/husband ever since the marriage and vituperative tongue of the wife and her mother would certainly amount to mental cruelty. The Trial Court has observed the demeanor of the witnesses and found that the wife caused mental cruelty to the husband.

15. The Hon'ble Supreme Court in DR.(MRS.) MALATHI RAVI, M.D. VS. DR.B.V.RAVI, M.D. [2014 SAR (CIVIL) 984] has held as follows:"

"25. In Samar Ghosh v. Jaya Ghosh[9], this Court has given certain illustrative examples wherefrom inference of mental cruelty can be drawn. The Court itself has observed that they are illustrative and not exhaustive. We think it

appropriate to reproduce some of the illustrations: -

"(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

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(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

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(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

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(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where [pic]the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

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(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it

shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.""

16. In such circumstances, this Court is of the considered opinion that the order passed by the Lower Appellate Court, considering the young age and the children is not based on legal evidence. Admittedly, the children have already attained majority. The questions of law are answered in favour of the appellant and the findings of the Lower Appellate Court is set aside.

17. In the result, the Civil Miscellaneous Second Appeal stands allowed. No costs.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

TK

To

1. The Principal District Judge
Villupuram District
Villupuram.

2. The Principal Subordinate Judge
Tindivanam.

Copy to

The Section officer
VR Section, High Courtm Madras 104.

+1 CC to Mr. Govi Ganesan, Advocate sr 42054.

+1 CC to M/s. N. Mala, Advocate sr 41951.

C.M.S.A.NO.33 OF 2010

RSV (CO)
SP (29/11/2018)

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