

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02-01-2018

CORAM:

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

Civil Miscellaneous Appeal Nos. 106 and 107 of 2012

A.R. Jayachandran .. Appellant in both the appeals/
petitioners

Versus

Chandrakala @ J. Chandra .. Respondent in both the appeals/
Respondents

CMA No. 106 of 2012:- Appeal filed under Section 19 of The Family Courts Act against the Judgment and Decree dated 02.05.2011 made in HMOP No. 651 of 2007 on the file of Family Judge, Coimbatore

CMA No. 107 of 2012:- Appeal filed under Section 19 of The Family Courts Act against the Judgment and Decree dated 02.05.2011 made in HMOP No. 819 of 2007 on the file of Family Judge, Coimbatore

For Appellant : Mr. V. Bhiman
in both the appeals

For Respondent : Mr. R. Lakshminarayanan
in both the appeals

COMMON JUDGMENT

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

The appellant has come forward with these appeals questioning the correctness of the Decree and Judgment dated 02.05.2011 made in HMOP No. 651 of 2007 and HMOP No. 819 of 2007 on the file of Family Judge, Coimbatore. By the said Judgment, the Family Court dismissed HMOP No. 651 of 2007 filed by the appellant/husband under Section 9 of The Hindu Marriage Act (hereinafter referred to as The Act) for restitution of conjugal rights and allowed HMOP No. 819 of 2007 filed by the wife/respondent for dissolution of the marriage.

2. Brief facts which are necessary for disposal of these appeals are succinctly narrated hereunder.

3. The marriage between the appellant and the respondent was solemnised on 06.11.2000 at Muthusamy Mudaliar Marriage Hall, Kuniyamuthur, Coimbatore District as per Hindu rites and customs in the presence of elders, friends and relatives of both sides. After the marriage, the appellant and the respondent lived together as husband and wife at the house of the appellant at Palanisamy Nagar, Arumugha Goundanoor, Perur Chettipalayam, Coimbatore for 1 ½ years. The appellant is a Neuro Psychology Technician and running a ECG Diagnostic Centre under the name and style of Sri Jayam ECG Diagnostic Centre at Gandhipuram, Coimbatore. While the appellant was running the Diagnostic business, as aforesaid, he got an employment at Kuwait and therefore, he left India and during the course of the employment of the appellant at Kuwait, the respondent stayed at her parents house at Karamadai and was also taking care of the Diagnostic Centre business. However, at the insistence of the respondent, the appellant left his employment at Kuwait and returned India. After his return to India, the appellant lived with the respondent at his parents house at Palanisamy Nagar for one year leaving his parents at his brother's house. During July 2004, the appellant and the respondent shifted their residence and lived at a rented house at New Siddhapudur, Coimbatore. According to the appellant, even after four years of marriage, they were not blessed with any child and therefore, both of them have taken treatment. In the meanwhile, at the insistence of the respondent, the appellant started a Medical Shop in the name and style of Sri Jayam Medicals at Annaji Rao Road, Mettupalayam during the year 2005 at a cost of Rs.6 lakhs and the shop was looked after by the elder sister of the respondent, while the appellant was looking after the diagnostic centre business. According to the appellant, on 23.12.2006, his father in law died and thereafter, the respondent frequented her mother's house to look after her. The respondent did not return to the matrimonial home for several days in spite of the request made by the appellant. Even though the respondent returned to the matrimonial home on and off, from 28.04.2007, the respondent did not return to the matrimonial home. Even though the appellant went to the respondent's mother's house along with his mother and sisters, the respondent refused to accompany the appellant by stating that he is impotent and not capable of giving birth to a child. According to the appellant, the respondent also exhibited disrespect towards his mother and sister and also portrayed rude behaviour. Thereafter, during May 2007, in spite of the rude behaviour of the respondent, the appellant convened a meeting in the presence of elders of both sides and during such meeting, the mother of the respondent assured to send the respondent back to the matrimonial home, but the respondent did

not return to the matrimonial home. In such circumstances, the appellant has filed HMOP No. 651 of 2007 under Section 9 of the Act for restitution of conjugal rights.

4. On notice, the respondent has filed a counter affidavit contending that the appellant and the respondent lived as a joint family for a period of one year from the date of marriage and during the said period, the respondent was subjected to matrimonial cruelty by her mother in law. The respondent was treated only as a servant maid and she was made to do all domestic chores without any rest. Even though the aunt and sister-in-law of the appellant supported the respondent, her mother-in-law refused to accede to those requests and treated the respondent very badly. On the one hand, the respondent looked after the diagnostic centre from the morning till evening and thereafter, she was made to do all house hold work after 9.00 pm by her mother in law. It is further stated in the counter affidavit that for the purpose of commencing the diagnostic centre business, as demanded by the appellant, her father has given a sum of Rs.10,00,000/- as loan, however, the said amount was not repaid by the appellant to her father. Further, at the instance of the appellant, the father of the respondent paid a sum of Rs.1,00,000/- for setting up a separate residence. It is specifically stated by the respondent in the counter affidavit that her mother in law nagged her by stating that she is not fit enough to give birth to a child and thereby she was subjected to acute cruelty and harassment. According to the respondent, it is the appellant who refused to have conjugal relationship with her and it was the reason for not delivering a child. Further, it is stated that from the first day of marriage, the appellant refused conjugal bliss to the respondent and that he is impotent. The appellant also refused to accompany the respondent for medical treatment to know the exact cause or defect which prevented the child birth. It is further stated that it is not the appellant who had spent Rs.6 lakhs for establishing medical shop, rather, the sum of Rs.6 lakhs was invested by her father for the sake of providing a livelihood to her elder sister. The respondent further contended that the appellant behaved like a mentally disordered person and he used to threaten the respondent to commit suicide for no reason. The appellant is not fit for conjugal relationship and behaved like a saint and he will not sleep till 2.00 am nor allow the respondent to sleep till such time. The respondent was subjected to matrimonial cruelty at the instance of the appellant in all forms and manifestations. The appellant has filed HMOP No. 651 of 2007 by suppressing several material facts besides furnishing incorrect particulars. The events alleged to have taken place by the appellant in his petition for restitution of conjugal rights are imaginary and they are not true. Therefore, the respondent prayed for dismissal of the petition filed by the appellant for restitution of conjugal

rights. Apart from seeking dismissal of HMOP No. 651 of 2007, the respondent also filed HMOP No. 819 of 2007 seeking dissolution of marriage, in which the appellant has filed his counter affidavit.

5. Before the Family Court, common evidence was let in, in both the Original Petitions. The appellant examined himself as PW1 along with Dr. Neelayadatchi as PW2 and Exs. P1 to P3 were marked. The respondent examined herself as RW1 along with one Renuka as RW2 and marked Exs. R1 to R8. The Family Court, after analysing the oral and documentary evidence, dismissed the petition in HMOP No. 651 of 2007 filed by the appellant for restitution of conjugal rights and dissolved the marriage solemnised between the appellant and the respondent by allowing the HMOP No.819 of 2007 filed by the respondent.

6. The learned counsel for the appellant would contend that the Family Court erred in concluding that the respondent was subjected to matrimonial cruelty without any evidence. The Family Court also erred in holding that it is the appellant who is having defect which deprived the couple from giving birth to a child. There was no reason, much less strong reason putforth by the respondent to desert the matrimonial company of the appellant which was not properly considered by the Family Court. The conclusion arrived at by the Family Court is based on surmises and therefore, he prayed for allowing the appeals.

9. Per contra, the learned counsel for the respondent would contend that both the appellant and the respondent are residing separately from 2007 i.e., atleast for more than 10 years. Further, the Family Court, taking into account the deposition of PW1 and RW1 as also the Doctor, PW2, examined on behalf of the appellant and RW2, sister of the respondent, has come to a conclusion, on facts, that there is irretrievable breakage of matrimonial life between the appellant and the respondent and therefore he prayed for dismissal of the appeals.

10. We have heard the submission of the learned counsel for both sides and perused the materials placed on record. Before the Family Court, on behalf of the appellant, Dr. Neelayadatchi was examined as PW2. On examination of the cross-examination of PW2, it is evident that she has deposed that the appellant was prescribed some tablets to stimulate his sperm growth when the appellant came for treatment for the first time and when she examined the appellant for the second time, there was some improvement in the sperm counts of the appellant. Based on this evidence, the Family Court concluded that there was some defect on the part of the appellant and that is the reason why the appellant was prescribed tablets for stimulating the sperm growth. The Family Court, based on this piece of evidence of PW2, who was examined by the appellant himself, has rightly concluded that there was defect on the part of the appellant to

have effective conjugal relationship with the respondent besides that such defects on the part of the appellant had deprived the respondent to give birth to a child. The Family Court also taken note of the various instances cited by the respondent in the Petition for dissolution of marriage and which were deposed before the Family Court as PW1 to conclude that the appellant refused conjugal relationship with the respondent and thereby he subjected her to cruelty. The Family Court further concluded that the father of the respondent has paid various amount to the appellant as loan to enable him to establish the Diagnostic Centre, however, the appellant has not produced any records to show that the above amount have been returned to him. The Family Court has further concluded that the respondent was subjected to matrimonial cruelty on the ground that she is not fit to lead a matrimonial life with the appellant, particularly, she is not capable of giving birth to a child. In this regard, the Family Court analysed the evidence of the respondent, as RW1 and her sister, RW2 and gave detailed narration of the factual events to conclude that the respondent was nagged frequently for not giving birth to a child, even though she was not at fault. The Family Court further gave a finding, on facts, that the appellant, by his refusal to have conjugal relationship with the respondent and by reason of his act and deeds had subjected her to matrimonial cruelty and therefore, the Family Court has dismissed the Petition filed by the appellant for restitution of conjugal rights and allowed the petition filed by the respondent for dissolution of marriage. When such a finding was rendered by the Family Court, on appreciation of oral and documentary evidence, we find no reason to interfere with the same. Even otherwise, as rightly pointed out by the learned counsel for the respondent, since 2007, the appellant and the respondent are residing separately and therefore, at this stage, there is no scope for re-union and the matrimonial tie between the appellant and the respondent had broken irretrievably beyond repair. Therefore also, we hold that the order passed by the Family Court needs no interference by this Court and the appeals deserve only to be dismissed.

11. Accordingly, we confirm the Judgment and Decree dated 02.05.2011 made in HMOP No. 651 of 2007 and HMOP No. 819 of 2007 on the file of Family Judge, Coimbatore. Consequently, both the appeals are dismissed. No costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

rsh

To

1.The Presiding Officer
Family Court
Coimbatore

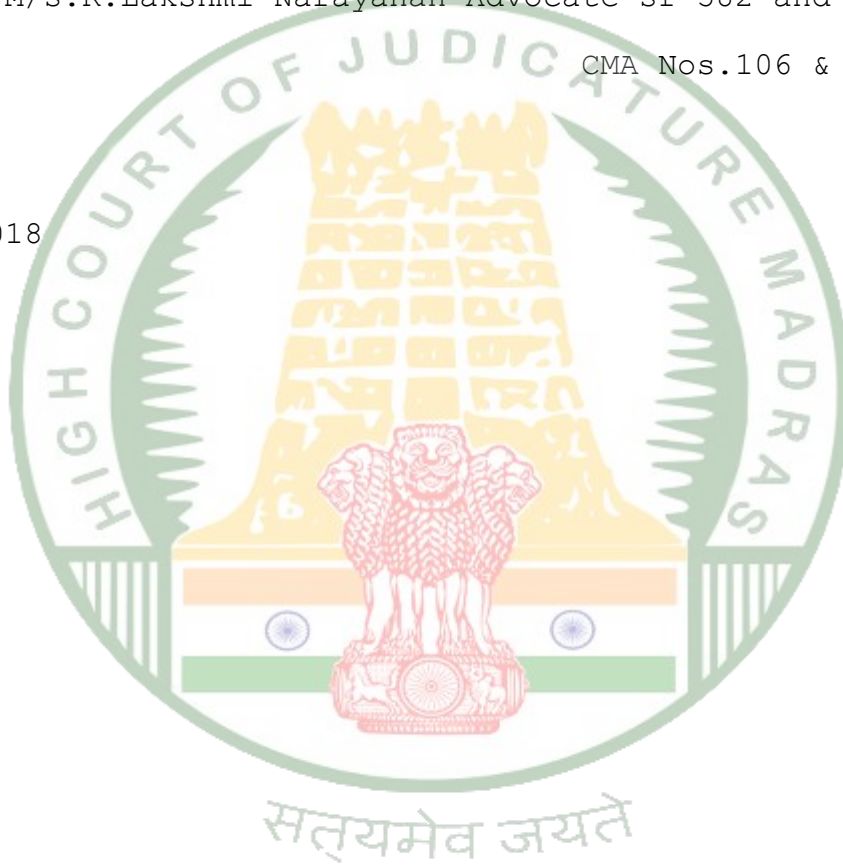
2.The Section Officer
VR Section
High Court Madras

+2 ccs to M/s.V.Bhiman Advocate sr 142 and 143

+2 ccs to M/s.R.Lakshmi Narayanan Advocate sr 582 and 583

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