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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 14-03-2018

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.SA.No.25 OF 2013

Maruthachalam ...Appellant/Appellant/Petitioner

-vs-

Kalaimani ...Respondent/Respondent/Respondent

Appeal against the judgment, dated 31.10.2012, passed in C.M.A.No.79 of 2009, on the file of III Additional District and Sessions Judge, Coimbatore confirming the Judgment and decree in H.M.O.P. No. 62/2006 dated 19.12.2008 on the file of Subordinate Judge, Pollachi.

For appellant : Mr.S.Mukunth
for M/s.Sarvabhauman Associates

For respondent : No appearance

JUDGMENT

As against the concurrent findings of both the Courts below, the appellant/husband has preferred this appeal, for grant of divorce. The appellant filed a petition for divorce on the ground of cruelty. Even though he made various allegations against his wife/respondent that she abused him and that she threatened that she would commit suicide, no material was produced before the Courts below to substantiate such allegations. In fact, the appellant had filed the petition for divorce in the year 2000 and withdrawn it at a later point of time. He again renewed the petition in the year 2006 on the same grounds.

2. The appellant has raised the following substantial questions of law :

(1) Are the Courts below justified in dismissing the application for divorce on the ground of mental cruelty, when the evidence on record clearly establishes the fact that the appellant was kept under constant threat of suicide by the respondent, warranting the appellant to break the marital relationship ?



(2) Are the Courts below justified in mis-appreciating the evidence of P.W.2 the neighbour of the appellant who had categorically deposed that the respondent had been frequently quarrelling with the appellant and disrespecting his parents in singular terms in open street and this fact would establish cruelty suffered by the appellant in the hands of the respondent ?

3. On perusal of the material coupled with the oral and documentary evidence, it is seen that both the Courts have concurrently found that the case of cruelty was not made out by the husband. I also do not find any material to establish that the husband suffered cruelty at the hands of the wife. As a matter of fact, most of the time, the respondent/wife was forced to live in her maternal home. In the absence of cohabitation, the allegations that she has been continuously abusing and threatening to commit suicide are all imaginary and the husband has utterly failed to prove cruelty. As found by the Courts below, the respondent/wife is willing to live with the appellant/husband even now, in spite of the difficulties being faced by her child. One of the grounds made by the husband is that wife is not taking care of the child, who is affected by epilepsy. The marriage has taken place in the year 1998 and, for the past two decades, the child is with the respondent/wife and she has been taking care of the child. Mere making of allegation of cruelty is not enough to get an order of divorce. It should be proved by convincing material that there existed cruelty and that the husband is entitled to get divorce on such ground. In the case on hand, there is no material to show that there was cruelty and that the appellant/husband suffered cruelty at the hands of the respondent/wife. In the absence of any material, the substantial questions of law are answered against the appellant. Therefore, I do not find any reason to interfere with the concurrent findings of both the Courts below.

4. Civil Miscellaneous Second Appeal is dismissed. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. III Additional District and Sessions Judge,
Coimbatore.

2. The Subordinate Judge
Pollachi.

+1 CC to M/s. Sarvabhutan Associates sr 19391.

C.M.S.A.No.25 OF 2013

GJ(CO)
SP(08/05/2018)