

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2018

CORAM:

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

Civil Miscellaneous Appeal No. 1927 of 2013

S. Senthil Kumar ... Appellant/Petitioner

Versus

C. Sasikala ... Respondent/Respondent

Appeal filed under 19 of The Family Court Act, 1984 against the Fair and Final Order dated 03.05.2013 made in HMOP No. 327 of 2009 on the file of Family Court, Coimbatore.

For Appellant : Mr. Saravana Sowmiyan
For Respondents : Mr. S. Chandrasekar

JUDGMENT

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

The appellant has come forward with this appeal aggrieved by the Order dated 03.05.2013 passed by the Family Court, Coimbatore in HMOP No. 327 of 2009 whereby the Family Court refused to dissolve the marriage solemnised between the appellant and the respondent on 10.02.2008.

2. From the averments made in HMOP No. 327 of 2009 filed by the appellant herein, it could be seen that the marriage between the appellant and the respondent was solemnised on 10.02.2008 as per Hindu rites and customs at Saradhambal Temple, Race Course Road, Coimbatore. On the same day, a marriage reception was conducted at Mahajana Sabha (Baliya Naidu) Kalyana Mandapam Coimbatore. The marriage was arranged by the elders of the family of the appellant and the respondent. At the time of marriage, the appellant and his family offered 3 sovereigns of gold chain and half sovereign of gold for the Mangalsutra. It was further contended that either the appellant or his family members made any demand for dowry. According to the appellant, at the time of marriage, he was 33 years old and the respondent was 34 years old. It was further stated that the respondent is none other than the daughter of the appellant's maternal uncle. Further, the appellant studied only upto IX standard, on the

contrary the respondent is a graduate and working in a College. According to the appellant, since his mother has promised and assured the mother of the respondent to take her daughter as his daughter-in-law, the appellant agreed for solemnisation of the marriage notwithstanding the fact that the respondent is one year older than him. It is the case of the appellant that even on the nuptial night, the respondent enquired with the appellant about the savings amount and the properties held in his name. When the appellant replied the respondent that her father (uncle of the appellant) is fully aware of the same, she insisted the appellant to disclose his income. When the appellant informed the respondent that he only has a share in the family property held by his family and he has no other property of his own, the respondent refused to have sexual intercourse with him. Similarly, two days after the marriage, when the appellant approached the respondent and expressed his desire to have sexual intercourse with her, she scolded the appellant and physically assaulted him. While so, 20 days after the marriage, the respondent suffered giddiness and fell down. This was informed to the parents of the respondent and they have taken the respondent to their home so that they could look after her and that she could get well soon. Two days thereafter, when the appellant went to the parents house of the respondent to see the respondent, the respondent openly uttered that she has no liking towards him especially when he has no separate house of his own and sought for a partition of the family properties of the appellant as a condition precedent to continue the matrimonial life with him. Thereafter, the attempts made by the appellant to meet the respondent did not fructify. There were several mediations taken place at the behest of elders of both sides for reunion. In fact, unable to resolve the matrimonial rift between the appellant and the respondent, the mother of the appellant died on 18.11.2008 and inspite of intimation having been given to the respondent, she did not attend the funeral. According to the appellant, the respondent failed and neglected to discharge her matrimonial obligations and refused conjugal relationship with him and thereby caused untold mental agony to him. According to the appellant, the respondent lived with him only for a month and even during such stay, she did not permit him to have sexual intercourse with her, thereby, he was subjected to acute matrimonial cruelty. In such circumstances, the appellant prayed for dissolving the marriage solemnised between him and the respondent on 10.02.2008.

3. Repudiating the averments made in the Original Petition, the respondent has filed a counter affidavit contending that the elder brother of the appellant was given in marriage to the younger sister of the respondent and they were living happily along with two children. According to the respondent, there were disputes between the appellant and his brother in connection with the family property and therefore, in

order to resolve such family dispute, the mother of the appellant requested the father of the respondent to arrange the marriage between the appellant and the respondent so that, the father of the respondent, as father-in-law to the appellant and his brother, will be in a position to resolve such disputes. In those circumstances, notwithstanding the fact that the appellant had studied only upto IX Standard and that the respondent is a graduate, the respondent agreed to marry the appellant. At the time of marriage, her parents have offered 25 sovereigns of gold ornaments and 3 sovereigns of chain to the respondent. According to the respondent, the appellant is addicted to alcohol drinks and for which he was taking treatment even before the marriage. However, suppressing the same, the respondent was given in marriage to the appellant. The appellant used to come to the matrimonial home only at around 2 'O' clock or 3 'O' clock in the early hours of morning in an inebriated condition and when it was questioned by the respondent, she used to get abused and assaulted by the appellant. According to the respondent, the appellant and his sisters did not like the father of the respondent interfering in the family dispute and therefore, in order to keep him away from such disputes, they have subjected the respondent to untold matrimonial cruelty. The appellant and his sisters have criticised the respondent by saying that she is mentally not sound and that she requires treatment and it had caused untold hardship to the respondent. In fact, in the panchayat convened to resolve the matrimonial dispute between the appellant and the respondent, the appellant and his sisters have even abused the elders in the family. When the respondent attempted to take legal action against the appellant and his sisters for having inflicted matrimonial cruelty on her, the appellant has filed the present Petition seeking to dissolve the marriage solemnised between the appellant and the respondent on 10.02.2008. The averments made in the Original Petition are not bonafide and they are absolutely concocted. Therefore, the respondent prayed for dismissal of the Original Petition.

4. Before the Family Court, in order to prove the averments made in the Original petition, the appellant examined himself as PW1 along with one Balasundaram as PW2 and marked Exs. P1 to P4. The respondent examined herself as RW1 and marked Ex.R1, copy of the plaint filed before the District Munsif Court, Coimbatore. The Family Court, upon analysing the oral and documentary evidence, concluded that even though the appellant has contended that the respondent is only interested in his wealth and has not discharged her obligations as a dutiful wife, the appellant failed to prove the same in a manner known to law. The Family Court also refused to accept the contention of the appellant that since the respondent did not file a Petition for restitution of conjugal rights, it can be construed that she has no interest to live with the appellant. In effect, the Family Court concluded that the dispute between

the appellant and the respondent is not such that it warrants dissolution of their marriage. Accordingly, the Family Court refused to dissolve the marriage solemnised between the appellant and the respondent on the ground of cruelty.

5. The learned counsel for the appellant would contend that the appellant and the respondent lived in the matrimonial home only for a month and thereafter, the respondent left the matrimonial company of the appellant. Even during the short stay in the matrimonial home, the respondent refused to have sexual intercourse with him and thereby subjected the appellant to matrimonial cruelty. Even though the appellant had taken several steps for re-union, the respondent refused to join the appellant and therefore, there is an irretrievable breakdown of the matrimonial life between the appellant and the respondent which was not considered by the Family Court. Further, the appellant and the respondent are residing separately atleast for ten years and on that ground alone, he prayed for setting aside the order passed by the Family Court.

6. On the contrary, the learned counsel for the respondent would contend that the appellant had come forward with several allegations to drive home the point that he was subjected to cruelty, however, none of the averments were substantiated by him either by oral or documentary evidence. The Family Court specifically recorded a finding that the respondent, in her evidence as RW1, has specifically contended that she is ready and willing to live with the appellant. The Family Court also recorded a finding that the appellant has admitted that he had settled his share in the family property in favour of his sisters and thereby the contention of the respondent that the sisters of the appellant were instrumental in keeping away the respondent from the matrimonial home to get the family property settled in their favour is substantiated. In any event, the dispute and difference between the appellant and the respondent is trivial and it does not warrant dissolution of the marriage. The learned counsel for the respondent therefore prayed for dismissal of the appeal.

7. We have heard the learned counsel for both sides and perused the materials on record. The marriage between the appellant and the respondent was solemnised on 10.02.2008. The appellant and the respondent are related to each other. According to the appellant, the respondent refused to have sexual intercourse with him and deserted his matrimonial company within a month of the marriage, but such an averment was denied by the respondent. On the contrary, the respondent would contend that the appellant is addicted to alcoholic drinks, he and his sisters have subjected her to matrimonial cruelty to ensure that she should not be an impediment in partitioning the family properties between the appellant and his sisters and

therefore, they have driven her from the matrimonial home. Thus, according to the respondent, her desertion from the matrimonial home cannot be construed to be without just or sufficient cause. Upon consideration of the above pleadings, the Family Court recorded a specific finding that the various averments raised by the appellant to contend that he was subjected to matrimonial cruelty was not proved by him. We are also of the view that the averments in the Original Petition, if read as a whole, will not constitute matrimonial cruelty said to have been inflicted on the appellant. The appellant did not mention any specific instances where he was subjected to matrimonial cruelty by the appellant. The appellant also did not prove that inspite of the efforts taken by him, the respondent refused to join him in the matrimonial home. The appellant did not examine any independent witness to show that he had taken steps to bring the respondent back to the matrimonial home. On the contrary, the respondent, in her deposition as RW1, has specifically stated that she is ready and willing to live with the appellant. At any rate, we find that the appellant has not given specific instances to prove that he was subjected to matrimonial cruelty by the respondent. The averments made in the original petition are not such that it warrants dissolution of the marriage between the appellant and the respondent.

8. As regards the contention of the learned counsel for the appellant that the appellant and the respondent are residing separately for the past ten years and such long separation alone can be taken note of to grant a decree of divorce, we are not inclined to accept such submission of the counsel for the appellant. Merely because the appellant and the respondent are residing separately for about ten years, it cannot be a ground for dissolving the marriage solemnised between them. The Family Court has considered the averments made by the appellant in the Original Petition and has rightly come to the conclusion that the appellant failed to prove the averments made therein and refused to dissolve the marriage solemnised between the appellant and the respondent on 10.02.2008. We do not find any reason to interfere with the conclusion arrived at by the Family Court.

9. In the result, we confirm the Order dated 03.05.2013 made in HMOP No. 327 of 2009 on the file of Family Court, Coimbatore and consequently the Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

The Presiding Officer
Family Court
Coimbatore

+1cc to Mr. Saravana Sowmiyan, Advocate sr.no.19569
+1cc to Mr. S. Chandrasekar, Advocate sr.no.19108

CMA No. 1927 of 2013

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