

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05-03-2018

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU
Civil Miscellaneous Appeal No. 2235 of 2012

P.Devaraj .. Appellant/Petitioner

Versus

Manimala .. Respondent/Respondent

Appeal filed under Section 19 of The Family Court Act against the Judgment and Decree dated 15.04.2004 passed in HMOP No. 497 of 2001 on the file of Family Court, Coimbatore.

For Appellant : Mr. V. Nicholas

For Respondent : Mrs. S.S. Jothivani

JUDGMENT

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

This appeal is filed by the appellant/husband questioning the correctness and/or validity of the Judgment and Decree dated 15.04.2004 passed in HMOP No. 497 of 2001 on the file of Family Court, Coimbatore. By the said Judgment, the Family Court refused to grant a decree of divorce and dismissed the Original Petition filed by the appellant.

2. It is the case of the appellant that he married the respondent on 24.01.1988 as per Hindu rites and customs and the marriage was solemnised at Kandasamy Chettiar Kalyana Mandapam, Oppanakara Street, Coimbatore in the presence of relatives of both sides. After marriage, the appellant and the respondent commenced their matrimonial journey in the house of the appellant. Due to the wedlock, a male and female child were born to them. It is stated that the appellant is working as a Car mechanic in a workshop called Coimbatore Automobiles and looked after the respondent and the children well. However, the respondent, even for trivial reasons, behaved rudely and indifferently towards the appellant which led to frequent quarrel. It is his case that the respondent did not respect his

parents or attended to the domestic chores in the family. While so, on one occasion, the respondent consumed poison due to reasons unknown to the appellant. Immediately, the appellant rushed the respondent to the hospital and due to sustained treatment given, the respondent could recover and the ill effects of poison were eliminated. After discharge from the hospital, the appellant and his parents advised the respondent not to resort to such extreme steps in future and lead a happy matrimonial life with the appellant. According to the appellant, he got transfer of his employment to Vellore and once in a week he used to come to the matrimonial home at Coimbatore. As the appellant felt it expensive to come over to Coimbatore every week, he suggested to the respondent to shift the residence to Vellore, but it was not accepted by the respondent. In fact, due to continuous quarrel with the respondent, the appellant left his employment and came back to Coimbatore. During 1995, a female child was born and the child developed some physical problems. When the parents of the appellant advised the respondent not to shower the female child every day, the respondent refused to heed to such advise and in this context, quarrel have emanated among them. During such quarrel, the respondent used abusive language against the appellant. On one occasion, unable to resist his temper, the appellant slapped the respondent and she had immediately given a complaint before the Inspector of Police, B-10 Police Station based on which an enquiry was conducted. During such enquiry, the respondent informed the police officials that she is prepared to get a decree of divorce upon receipt of Rs.1 lakh from the appellant towards permanent alimony. On such statement, the police officials also asked the appellant and the respondent to settle their matrimonial dispute through competent Court of law. According to the appellant, thereafter, the respondent is residing separately with the two children. Thus, by reason of the attitude of the respondent, the matrimonial relationship between the appellant and the respondent had irretrievably broken leaving no scope for reunion. The appellant has therefore filed the Original Petition.

3. Repudiating the averments contained in the Original Petition, the respondent filed a counter contending that right from the date of marriage, the appellant ignored the respondent and she was not taken care of well by the appellant. There was misunderstanding between the appellant and the respondent within a short time of the marriage, however, the respondent anticipated that the appellant would change his behaviour pattern and patiently waited for reformation of the appellant. The respondent had discharged her obligation as a dutiful wife and looked after the family well. The respondent did not consume poison, as alleged by the appellant and those averments have been made for the purpose of this petition. After the

appellant got his employment transferred to Vellore, he did not pay any money for the respondent to meet the day to day expenses and she suffered immensely. In fact, the respondent expressed her willingness to stay with the appellant at Vellore, but he refused such a request made by her. The appellant did not resign his job due to the matrimonial problem which confronted with the respondent, as alleged. The respondent never used abusive words towards the appellant. During the enquiry by the police officials, the respondent never expressed her willingness to get a decree of divorce on payment of Rs.1,00,000/- by the appellant. The respondent and the children are residing in a portion of the house which belongs to the father of the appellant. The respondent is always ready and willing to continue the matrimonial relationship with the appellant, atleast in the welfare of the two grown up children. The respondent therefore prayed for dismissal of the Original Petition.

4. Before the Family Court, the appellant examined himself as PW1 and the respondent examined herself as RW1. However, both of them did not mark any documentary evidence. The Family Court, on analysing the oral and documentary evidence, had come to the conclusion that the instances projected by the appellant are not substantiated by him besides that the alleged matrimonial cruelty inflicted on him are denied by the respondent. Even though the appellant alleged that the respondent consumed poison during a petty quarrel, he did not produce any document to show that she was hospitalised or the nature of treatment given to her. The Family Court further held that the respondent is residing in a portion of the house which belonged to the father of the appellant and therefore there are possibilities for the couple to get united. It was further concluded that in the Original Petition, the appellant did not say when the respondent deserted his matrimonial company because, admittedly, the respondent is residing in a portion of the house of the appellant. Therefore, the Family Court gave a finding that the separation of the appellant and the respondent can be construed as temporary. Even otherwise, the dispute between the appellant and the respondent are not such that it warrants dissolution of their marriage. Accordingly, the Family Court dismissed the Original Petition filed by the appellant.

5. The learned counsel for the appellant would contend that even though the respondent is residing in a portion of the house owned by the appellant's father, the appellant and the respondent are residing separately for the past several years and there is no physical relationship between the appellant and the respondent, while so, the Court below ought to have granted a decree of divorce as prayed for by the appellant. The finding of the Court below that the separation of the appellant and the

respondent is temporary and there is scope for their reunion is untenable. Thus, according to the learned counsel for the appellant, the long and continued separation of the appellant and the respondent had rendered the matrimonial relationship between them meaningless and on this ground he prayed for setting aside the decree and judgment of the trial court and consequently to grant decree of divorce.

6. Per contra, the learned counsel for the respondent would contend that the respondent is residing in a portion of the house owned by the appellant's father along with the children. Taking note of the above, the Family Court rightly concluded that there are abundant scope for reunion of the couple. Furthermore, the averments made in the Original Petition relating to the misunderstanding between the appellant and the respondent are not such that they warrant dissolution of the marriage. The Court below, on analysing the oral evidence of the appellant and the respondent has rightly dismissed the Original Petition and he prayed for dismissal of the Original Petition.

7. We have heard the counsel for both sides and perused the materials placed on record. The marriage between the appellant and the respondent was solemnised on 24.01.1988 as per Hindu rites and customs and due to such wedlock, two children were born. In the original petition filed by the appellant, after ten years of marriage, it was stated that the respondent did not respect the elders in the family, she did not discharge her matrimonial obligations as a dutiful wife and often indulges in quarrel with him. It is also stated that during a quarrel, the respondent consumed poison and she was admitted in the hospital. It was also stated that the appellant and the respondent are residing separately from the year 1995 and such a long and continued separation had rendered the matrimonial relationship otiose. These averments were denied by the respondent by stating that she along with the two children are residing in a portion of the house belonged to the father of the appellant and there was no separation, as such. It is also stated that the respondent is always ready and willing to join the appellant to lead a blissful and peaceful matrimonial life.

8. Even though several instances relating to matrimonial dispute were made in the Original Petition, the appellant did not file any documentary evidence. Further, though the appellant alleged that the respondent consumed poison for reasons not known to him and she was hospitalised, the appellant did not produce any documentary evidence to substantiate the hospital where she was admitted and the nature of treatment given to her. The appellant examined himself as PW1 and the respondent examined herself as RW1. Both of them did not mark any documentary evidence. The Family Court, based on the oral

evidence of PW1 and RW1, rendered a specific finding that the averments made in the Original Petition are not such that they warrant dissolution of marriage. We also notice that the averments made in the Original Petition are vague and bald without being substantiated by the appellant. We also find that the Family Court has rightly held that the respondent and the children are residing in a portion of the house owned by the father of the appellant and therefore, the separation can be construed as a temporary one and there are abundant chances for the couple to get reunion. In such circumstances, we are not inclined to interfere with the findings of the Family Court which are based on factual matrix of the case. Accordingly, we dismiss the Civil Miscellaneous Appeal by confirming the Judgment and Decree dated 15.04.2004 passed in HMOP No. 497 of 2001 on the file of Family Court, Coimbatore. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

rsh

To

The Presiding Officer
Family Judge
Coimbatore.

Copy To

The Section Officer,
VR Section, High Court,
Madras-104 (2 Copies)

+1cc to Mr. V. Nicholas, Advocate, S.R.No.16760

+1cc to Mrs. S.S. Jothivani, Advocate, S.R.No.16524

RJ(CO)
CS/10/09/18

CMA No.2235 of 2012

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