

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.11.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.868 of 2014

G.Sugunan

... Appellant / Petitioner

Vs.

Geetha Kumari

... Respondent / Respondent

This Civil Miscellaneous Appeal is filed under Section 28 of the Hindu Marriage Act, to set aside the order dated 21.06.2013 made in H.M.O.P.No.169/2009 on the file of the 3rd Additional District Court, Poonamallee.

For Appellant : M/s.Sudharshana Sundar

For Respondent : Mr.S.Venkata Krishnakumar

Judgment

This Civil Miscellaneous Appeal has been filed against the order dated 21.06.2013 made in H.M.O.P.No.169/2009 on the file of the 3rd Additional District Court, Poonamallee, wherein, the learned III Additional District Judge, Poonamallee, dismissed the said H.M.O.P. filed by the petitioner/husband seeking divorce/dissolution of marriage solemnized between him and his wife/respondent herein on 05.11.1989.

2. When the matter came up for hearing on 03.10.2018, this Court directed the parties to appear on 12.10.2018. Accordingly, on 12.10.2018, the husband, wife and son appeared before this Court. On that day, the husband has stated that he is not willing to live with his wife, due to some disputes between them; The wife has stated that she wants to see and talk to her son, whenever she wants; The son has stated that his mother was very strict in his childhood, hence, he disliked her and not even talked to her. But, after persuasion of this Court, the son is ready to contact her mother/respondent herein whenever she wants to meet him. Since the husband was interested to sell his flat, to which his wife has given her consent, this Court directed the parties to arrive at a settlement regarding the flat and other issues.

3. Accordingly, when the matter is taken up today i.e. 02.11.2018, the petitioner/husband and son agree that the respondent/wife/mother to reside in the said house till her life time.

4. The appellant/husband's statements are that he was travelling from one place to other since he was working in ONGC and he purchased a flat at GG Nagar, Chennai by obtaining loan from ONGC and he used to visit the family in the week end and whenever, he visited, her wife used to quarrel with him and she did not allow him to talk with his parents, are all the trial issues. Even though, the respondent/wife pleads before this Court that she is ready to live with her husband/appellant and son till her death, the said request was not accepted by the husband/appellant.

5. Eventhough the son says that the mother was very strict towards him, if he did not study for the hours during his young age, the mother says that she wants his son to come up in life, hence she is very strict at that age for the welfare of her son since her husband was working away from the family and is not living with them and used to visit the family during the holidays alone and with great difficulty, she made her son to study well and now her son is an Aeronautical Engineer.

6. The wife further states that during the years, she has developed multiple fibroids, the largest one measuring 5 cms in diameter and the hysterectomy specimen weighing about 200 gms with an elongated Cervix and thickened Myometrium, an ailment of the uterus, due to which, she underwent a surgery of uterus removal. She also submits that it is always usual for a woman, at the time of undergoing menopause, to have physical changes as well as mental changes due to hormonal imbalance and as such, at that time of menopause, she may have behaved likely and which is a normal behaviour. She further pleads that now she crossed that stage of menopause and she cares for the son and the husband and the husband is living with his sister after his retirement, which proves that the husband is having cordial relationship with his family members. She also pleads that at this age, she has no other relatives other than husband and son and she wants to live with her husband and son.

7. Considering the above facts and circumstances and also considering the submissions of the father, mother and son, this Court is of the view that the allegation of appellant/husband that the respondent/wife is a person with negative attitude, argumentative, short tempered and totally indifferent towards petitioners, may be true at the young age and it would have been the natural behaviour of a woman at that age of menopause, and as years gone, she would have changed by this time and now the respondent/wife crossed the age of 52. Moreover, as a mother, that too when the father is away the family for the purpose of

job, the respondent may be strict at the young age of a child, only for the welfare of the child. In the above circumstances, this Court feels that the above acts of the wife/mother does not amount to cruelty.

8. Considering the above facts and circumstances and also considering the age of the parties concerned, viz., 62 years and 52 years respectively, this Court is not inclined to grant a decree of divorce. However, this Court directs that the appellant/husband can create a life interest to the respondent/wife and settle the property in the name of his son, viz., G.S.Nidees and the son can take the property after the lifetime of his mother, the respondent herein. The respondent/wife is permitted to use the said house only for her residential purpose and she is not permitted to do any alterations in the said house. Rs.10,000/- already being paid by the petitioner/husband as interest to the respondent/wife towards maintenance has to be continued by the petitioner/husband and son, till the death of the respondent herein and it has to be paid on or before 5th of every month. In case, if the amount is not sufficient due to escalation of price, the respondent/wife/mother is at liberty to approach the Court for enhancement of the said amount.

9. With the above terms, the Civil Miscellaneous Appeal is disposed of. The order dated 21.06.2013 made in H.M.O.P.No.169/2009 on the file of the III Additional District Court, Poonamallee, is confirmed. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

raja/mra

To

The III Additional District Court, Poonamallee.

+1cc to Mr.Sudharshana Sundar, Advocate SR.No.76304

+1cc to Mr.S.Venkatakrishnakumar, Advocate SR.No.76367

C.M.A.No.868 of 2014

RSV(CO)
GMY(23/01/2019)