



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	02.07.2018
Date of Judgment	09.07.2018

WEB COPY

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
and
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)Nos.319 and 320 of 2015
and
MP(MD)Nos.1 and 1 of 2015

1.CMA(MD)No.319 of 2016:-

Thangam : Appellant /Respondent
Vs.

M.Rajesh : Respondent/Petitioner

PRAYER:- Civil Miscellaneous Appeal filed under Section19 of the Family Courts Act, against the common judgment and decree passed in HMOP No.174 of 2014, dated 12.02.2015 on the file of the Family Court, Tirunelveli.

1.CMA(MD)No.320 of 2016:-

Thangam : Appellant /Respondent
Vs.

M.Rajesh : Respondent/Petitioner

PRAYER:- Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, against the common judgment and decree passed in HMOP No.373 of 2014, dated 12.02.2015 on the file of the Family Court, Tirunelveli.

For Appellant : Mr.R.Pon Karthikeyan
For Respondent : Mr.K.Samidurai

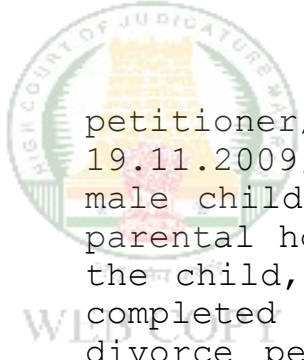
COMMON JUDGMENT

(Judgment of the court was delivered by T.KRISHNAVALLI,J)

These Civil Miscellaneous Appeals arise out of the common order passed in HMOP Nos.174 and 373 of 2014, dated 12.02.2015 on the file of the Family Court, Tirunelveli.

<https://hcservices.courts.gov.in/hcservices/>

2.The un-controverted facts are that the marriage between the



petitioner/wife and the respondent/husband was solemnised on 19.11.2009; out of the lawful wedlock, they were blessed with a male child on 02.02.2011 and that the petitioner was sent to her parental home by the respondent for delivery and after delivery of the child, the respondent failed to see her and her child and he completed neglected her. Thereafter, the respondent filed a divorce petition at Andhra Pradesh and for that, the petitioner filed a transfer petition before the Hon'ble Supreme Court of India and the same was transferred to the file of the Sub Court, Tirunelveli and again made over to the file of the Family Court, Tirunelveli, in HMOP No.174 of 2014. The petitioner also filed a petition seeking restitution of conjugal rights and the same was subsequently made over to the file of the Family Court, Tirunelveli, in HMOP No.373 of 2014. The above two HMOPs were tried together and by a common judgment, dated 12.02.2015, the learned Family Court, Tirunelveli, allowed the HMOP No.174 of 2014 filed by the respondent/husband seeking divorce and dismissed the petition in HMOP No.373 of 2014 seeking restitution of conjugal rights. Aggrieved over the common judgment the present civil miscellaneous appeals have been filed by the wife.

3.The learned counsel for the appellant/wife submitted that the trial court has committed error in granting the decree of divorce, when the respondent/husband failed to prove the alleged desertion and cruelty by the wife and erroneously dismissed the petition seeking restitution of conjugal rights and that the trial court has ignored the fact that the respondent did not evince any interest to bring his wife and child to his house, whereas the wife had tried her level best to communicate her husband and she was clamoring for the matrimonial home and that the trial court has granted the decree of divorce on the ground that the wife has filed the petition seeking restitution of conjugal rights after three years, which is not maintainable in law and that the trial court has failed to see that she never left the matrimonial home on her own, but she was sent to her parental house only by the husband for delivering the child and the husband also admitted during the cross examination that he only took her to the railway station and sent her for delivery and the trial court has not considered the welfare of the minor child before granting the relief of divorce and that the trial court has committed a grave error in shifting the entire responsibility and burden on the wife to prove the case of the husband. In view of the above facts, the common order passed by the trial court has to be set aside and the appeals are to be allowed.

4.The learned counsel for the petitioner has relied upon the decision reported in (2010)3 MLJ 91 (R.Sudha Vs. V.Senthil) by contending that the approach of the trial court in granting divorce is not only unacceptable and erroneous and the trial court cannot inject or infuse its own personal views in to judgment and mere trivial irritations, quarrels, normal wear and tear of



married life would not amount to mental cruelty and the trial court completely mis-directed itself by granting decree for divorce.

5. Per contra, the learned counsel for the respondent/husband submitted that the appellant/wife chose to convey her resolve not to beget children from the wedlock and after joining at matrimonial home, the appellant/wife started to harass the respondent and his elders and did not behave properly with the respondent when he used to come back regularly after his office duties and that the elder members of the respondent advised her to behave properly and after delivery of a male baby on 02.02.2011, the appellant/wife has not returned to the matrimonial home and that neither the appellant/wife, nor her parents have invited either the respondent or his family members for commensuration of religious functions associated due to born of the child, which clearly indicates that the appellant/wife has no interest to re-join the respondent and that the trial court, considering all these aspects, has granted decree of divorce and dismissed the petition filed by the wife for restitution of conjugal rights. Hence, prays that these appeals are to be dismissed.

6. Heard Mr.R.Pon Karthikeyan, learned counsel appearing for the petitioner and Mr.K.Samidurai, learned counsel appearing for the respondent and perused the materials available on record.

7. The appellant in CMA(MD)Nos.319 and 320 of 2015 is the wife and the respondent is the husband. It is admitted on both sides that the marriage between the appellant and the respondent solemnised on 13.11.1999 and due to the wedlock, a son was born.

8. The order passed by the trial court in HMOP No.174 of 2014 for divorce and HMOP No.373 of 2014 filed for restitution of conjugal rights by the wife had carefully perused. The husband filed petition for divorce on desertion and cruelty. Nowhere in the order, it was stated that the wife voluntarily went to her parental house without any sufficient reasons.

9. Further, the learned trial Judge has not stated whether there was any continuous desertion by the wife. The respondent himself admitted during his cross examination that he only sent his wife to her parental house for delivery. There was no discussion in the order of the trial court to the effect that the respondent/husband has taken any steps to take back his wife and new born baby from the parental house of the wife after delivery. No reasons have been stated by the trial court, how the trial court came to the conclusion that there was continuous desertion on the part of the wife. In the matrimonial case, desertion must be proved by the husband without any valid reasons. All desertions would not amount to cruelty. In this case, no document was filed on the side of the respondent/husband to show that after the delivery, he

has taken steps to take back his wife.

10. Further, the trial court stated that three years after desertion the appellant/wife filed the petition for conjugal rights showing her continuous desertion from her husband and she has no intention to reunion and hence, the divorce was granted to the husband. It was not stated in the order that after delivery of the new born baby, whether the respondent/husband has taken any steps to take back his wife and son. No sufficient reasons were given by the trial court for granting divorce and dismissing the restitution of conjugal rights by the wife. There was no proper discussion in the order in respect of granting of divorce. Delay in filing the conjugal rights by the wife does not amount to valid desertion and cruelty. Hence, it is necessary to interfere in the findings of the trial court.

11. In the result, both the appeals are allowed. The impugned common order, dated 12.02.2015 made in HMOP Nos.174 and 373 of 2014 passed by the Family Court, Tirunelveli, is set aside and the matter is remanded back to the Family Court, Tirunelveli to reconsider the case afresh and pass a detailed order as expeditiously as possible, not later than six months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AD-II)

/True Copy/

Sub Assistant Registrar

To

The Judge, Family Court,
Tirunelveli.

COPY TO:

The Section Officer, V.R. Section,
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**

+2cc to M/S.R.Pon Karthikeyan, Advocate SR.No. 71729 & 71730
+2cc to M/S.K.Samidurai, Advocate SR.No. 71749 & 71750

Common Judgment made
in C.M.A (MD) Nos.319 and 320 of 2015

09.07.2018