

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved on : 08.08.2017
Pronounced on : 06.02.2018

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CORAM**THE HONOURABLE MRS.JUSTICE J.NISHA BANU****C.M.S.A(MD)No.16 of 2013**

Solaimallaiyan

... Appellant/Respondent/Petitioner

Vs.

Jeyanthi

... Respondent/Appellant/Respondent

PRAYER:- Civil Miscellaneous Second Appeal filed under Section 28 of the Hindu Marriages Act, 1955 r/w section 100 of CPC, against the judgment and decree dated 10.01.2013 made in C.M.A.(H.M.).No.11 of 2010 on the file of the Principal District Court, Srivilliputhur, Virudhunagar District, reversing the judgment and decree dated 25.06.2010 made in H.M.O.P.No.27 of 2008 on the file of the Sub-Court, Aruppukkotai.

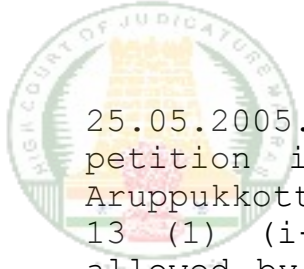
For Appellant : Mr.M.Ajmalkhan,
Senior Counsel for M/S. Ajmal Associates

For Respondent : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed under Section 28 of the Hindu Marriages Act, 1955 r/w section 100 of CPC, against the judgment and decree dated 10.01.2013 made in C.M.A.(H.M.).No.11 of 2010 on the file of the Principal District Court, Srivilliputhur, Virudhunagar District, reversing the judgment and decree dated 25.06.2010 made in H.M.O.P.No.27 of 2008 on the file of the Sub-Court, Aruppukkotai.

2.The short facts leading to filing of this Civil Miscellaneous Second Appeal is that the Marriage between the appellant and respondent was held on 31.10.2003 under the Hindu rites and customs in the presence of elders of the family members and relatives. Out of their wedlock, there was no child. While the matter stood thus, on 02.03.2004 the wife/ respondent left the home of the husband and some panchayat was held. It resulted in reunion of husband with his wife. The wife/respondent again left the home from the husband on



25.05.2005. While so, initially, the husband filed the divorce petition in H.M.O.P.No. 27 of 2008 on the file of Sub Court, Aruppukkottai on the ground of cruelty and desertion under Section 13 (1) (i-a) and (i-b) of Hindu Marriage Act and the same was allowed by the Court below and decreed on 25.06.2010. Against that decree the wife/ respondent herein filed the H.M.C.M.A.No. 11 of 2010 and the same was allowed on 10.01.2013. Aggrieved over the same, the appellant/husband is before this Court.

3.At the time of admission this Civil Miscellaneous Second Appeal is admitted on the following substantial questions of law:-

"1.Whether the acts of cruelty pleaded by the husband and proved by him amount to legal cruelty as per Section 13(1)(i)(a) of the Hindu Marriage Act?

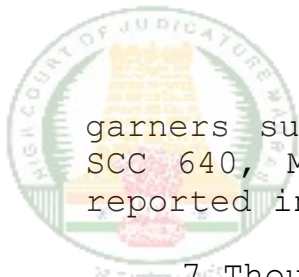
2.When the failure of the First Appellate Court to frame proper points for consideration under Order 41 Rule 31 CPC as regards desertion has vitiated its judgment to the detriment of the husband?

3.Whether the finding of the first appellant Court as regards cruelty is a result of admission of irrelevant, immaterial and inadmissible evidence and rejection of relevant material and of admissible evidence and the finding based on such legal unacceptable evidence is liable to be set aside under Section 100 of CPC?"

4.Learned counsel appearing for the petitioner submits that under Section 13 (1) (i-b) of Hindu Marriage Act, 1955 stating that the marriage has been dissolved by a decree of divorce on the ground that the respondent/wife deserted the petitioner/husband for a continuous period of not less than two years immediately preceding the presentation of the petition and therefore, he is entitled to get a divorce from the respondent/wife. The respondent/wife herein in her deposition clearly admitted that there is no reason for separation from the husband from the date she left the home of the husband and it is incorporated in paragraph 10 of Judgment in H.M.O.P.27 of 2008 and that it clearly shows that the wife voluntarily deserted the husband from 17.05.2005 to 05.04.2008.

5.The cruelty attributed against the wife by the husband is that the wife has not followed the husband's words. She has not co-operated with her husband for normal matrimonial duties as that of a wife to the husband and his family members and refused to cohabit with the husband and therefore, this amounted to cruelty which deprived the husband from leading a normal life and according to the husband, this act of the wife is mental cruelty.

6.Perusal of records shows that in the deposition by the wife, she has admitted that there were clashes between them for a period of nearly 1½ years in the Tashinamoorthy Street house. She also admitted that even after re-union, there was no normal matrimonial life with the husband and therefore, on the ground of cruelty, the husband sought divorce which was granted by the lower Court and he



garner support from the Apex Court judgment reported in (2014) 7 SCC 640, Malathi Ravi M.D. vs. B.V.Ravi M.D and (2007) 4 SCC 511 reported in Samar Ghosh vs. Jaya Ghosh.

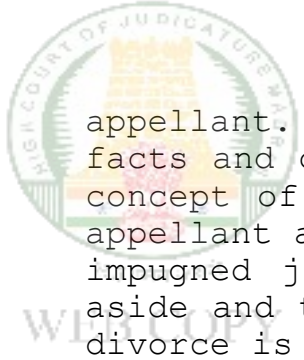
7. Though Court notice was served on the respondent and name of the counsel was printed in the cause list, neither the respondent nor her counsel was present. This matter was admitted wayback in the year 2013. More than four years have gone by. Therefore, this Court has no other option but to proceed with the available court records.

8. Though very many substantial questions of law has been raised, to the case in hand, it would be appropriate to deal with the first substantial question of law alone which would suffice to decide with the case. Admittedly the wife/the respondent herein has left the matrimonial home from her husband on 25.05.2008 and the wife has not filed any petition for restitution of conjugal right for her reunion with husband as on today and she is also living separately from the husband for past nine years and husband is not willing to live with her. Therefore, where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty. Therefore, the appellant falls within the category of Section 13(1) (i) (a) of the Hindu Marriage Act.

9. When I take into consideration the aforementioned factors along with an important circumstance that the parties are admittedly living separately for more than nine years and in such cases, the irresistible conclusion would be that matrimonial bond has been ruptured beyond repair because of the mental cruelty caused by the respondent/wife. The conduct of the wife shows that the widening of the rift between them. Therefore, the appellate Court in the impugned judgment seriously erred in reversing the judgment of the H.M.O.P.No.27 of 2008 on the file of the Sub-Court, Aruppukottai dated 25.06.2010. The lower appellate Court in the impugned judgment ought to have considered the most important and vital circumstance of the case in proper perspective that the parties have been living separately for a period of more than two years and thereafter, the wife did not even file any petition for reunion.

10. Therefore, this is a clear case of irretrievable breakdown of marriage. In my considered view, it is impossible to preserve or save the marriage by force or coercion. Any further effort to keep it alive would prove to be totally counterproductive. In the backdrop of the spirit of the case, the Sub-Judge, Aruppukottai, was fully justified in decreeing the appellant's suit for divorce.

11. In my view, in a case of this nature, no other logical view is possible. Therefore, I answer the first question in favour of the



appellant. In other words, on proper consideration of cumulative facts and circumstances of this case, the trial court, applied the concept of mental cruelty and accordingly, granted divorce to this appellant and the same is confirmed by this Court. Consequently, the impugned judgment of the appellate Court dated 10.01.2013 is set aside and the judgment of the trial Court in granting the decree of divorce is restored. This appeal is accordingly allowed. No costs.

Sd/-

Assistant Registrar (T & P)

/True Copy/

Sub Assistant Registrar

To

1) The Principal District Judge,
Srivilliputhur,
Virudhunagar District.

2) The Sub Judge,
Aruppukkotai.

3) The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1cc to M/S.AJMAL ASSOCIATES, Advocate SR.No.47168.

order made in
C.M.S.A (MD) No.16 of 2013
06.02.2018

bala/ssm
SDS/SV:MMS/SAR 1/27.02.2018/4P/6C