



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.09.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CMA(MD).No. 867 of 2011

Paul Sundaram

: Appellant / Petitioner

Vs.

1.Thaynesmarry @ Thaynes

2.M. Anthony

: Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Order XL VIII Rules 1 to 3 of Civil Procedure Code, against the fair and decreetal order made in IDOP.No.41 of 2008 on the file of the Principal District Judge, Pudukkottai, dated 12.04.2011.

For Appellant : Mr. S.Vijayan
For R1 : Mr.K.Balasundaram
For R2 : Mr.S.Deenadhayalan

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the fair and decreetal order, made in IDOP.No.41 of 2008 on the file of the Principal District Judge, Pudukkottai, dated 12.04.2011.

2. The appellant / husband is the petitioner in IDOP.No.41 of 2008 on the file of the Principal District Judge, Pudukkottai. The first respondent is wife of appellant and the second respondent is husband of first respondent's elder sister.

3. The appellant filed IDOP.No. 41 of 2008, against the first respondent, for divorce on the ground of cruelty, adultery and desertion. According to the appellant, appellant and first respondent got married on 17.06.1999 as per the Christian Rites and Customs. From the beginning of the marriage, the appellant and first respondent did not have any normal matrimonial life. The appellant came to know that even before the marriage with the appellant, the respondents had illicit relationship. Both the appellant and the first respondent are working as teachers and they were posted at different places and they were living separately. The appellant used to visit the first respondent often and at that time, the appellant came to know that the second respondent used to



go to the house of the first respondent often and used to stay with the first respondent on Sunday to Wednesday. The first respondent also used to go to the second respondent's house at Pollachi during Saturday and Sunday. When the appellant went to the house of first respondent, he found a letter written by the second respondent to the first respondent and took copy of the same and left the original in the house of the first respondent itself. The first respondent also admitted that she had illicit relationship with the second respondent and has written to the appellant to that effect. The first respondent has stated that she will not live with the appellant and without any reason has deserted the appellant. The first respondent ill-treated the parents of the appellant by using filthy language and insisted the appellant to have a separate life. On these averments, the appellant filed the above IDOP, for divorce.

4. The first respondent filed counter statement and denied all the allegations made by the appellant. According to the first respondent, both the appellant and the first respondent were living together in a same house, though they were working in the different schools. The first respondent had no parents and the appellant sent the first respondent to her elder sister's house, who is the wife of the second respondent, for delivery of second child. Even after delivery of second child, the appellant and first respondent were living together happily except normal misunderstanding between the husband and wife in family there was no other dispute in the matrimonial life of the appellant and first respondent. The appellant is having suspicious character. Due to that, the appellant made false allegations against the respondents. Only on the ill advice of his mother, the appellant earlier filed IDOP.No.200 of 2006 for divorce without any basis. The appellant after evidence being recorded did not proceed with the said IDOP, as he was of the opinion that same would be dismissed. The appellant by making false allegations against the respondents with regard to illicit relationship, has damaged their character among the friends and relatives. In view of the above false allegations, the first respondent suffered mental agony and prayed for dismissal of the IDOP.

5. The second respondent filed counter statement and denied all the allegations and contended that there is no illicit relationship between the respondents. In view of the false allegations of the appellant, the second respondent suffered mental agony and could not concentrate on his business and suffered loss. He further contended that the second respondent is taking steps to file civil and criminal case against the appellant.

6. Based on the above pleadings, the learned Judge framed necessary points for consideration.

7. Before the Trial Court, the appellant examined himself as PW.1 and his daughter was examined as PW.2 and marked 5



documents as Exs.P1 to P5. The respondents 1 and 2 examined themselves as RW.1 and RW.2 and they have not marked any documents. Considering the pleadings, oral and documentary evidence, the learned Judge dismissed the IDOP.

8. Against the order of dismissal, the appellant / husband has come out with the present appeal.

9. The learned counsel appearing for the appellant reiterated the averments made in the grounds of appeal and further contended that the learned Judge failed to appreciate the facts and circumstances of the case and evidence let in by the appellant. The appellant has proved his case by adducing oral and documentary evidence. The learned Judge failed to consider the evidence of PW.2 and she was examined by the appellant with regard to adultery. The learned Judge erroneously rejected Ex.P5 which was marked through the first respondent, while she was examined as RW.1. In support of his contention, the learned counsel appearing for the appellant relied on the following Judgments:

- i) 2012(2) MLJ 833 (U. Sree Vs. U. Srinivas)
- ii) 2009(2) LW 191 (Satish Sitole Vs. Smt. Ganga)
- iii) 2010 (7) MLJ 407 (SC) (Ravikumar Vs. Julmi Devi)

10. Per contra, the learned counsel appearing for the respondents 1 and 2 separately contended that allegation of adultery is without any basis and the appellant has not proved the said allegation. The learned counsel appearing for the first respondent contended that evidence on record clearly shows that it is the appellant, who did not allow the first respondent to join with him in the matrimonial home and contended that earlier the appellant filed IDOP.No.200 of 2006 on the ground of cruelty. After examination of witnesses, the said OP was dismissed for default and prayed for dismissal of this appeal. In support his contention, he has relied on the following Judgments:

- i) 2004 (7) SCC 747 (Shyam Sunder Kohli Vs. Sushma Kohli Alias Satya Devi)
- ii) 2007(2) CTC 97 (S.Amutha Vs. C.Manivanna Bhupathy)

11. I have heard the learned counsel appearing on either side and perused the materials available on record.

12. The appellant has sought for divorce against the first respondent on the ground of cruelty and adultery and dissipation.

13. The second respondent is impleaded as co-respondent with whom, according to the appellant, the first respondent is having illicit relationship. In the present appeal, except the ground of adultery, no other grounds and submission were made for desertion and cruelty. As far as adultery is concerned, the appellant as PW.1 has spoken about various averments in the



petition. In addition to that, he has also relied on Exs.P4 and P5. According to the appellant, in the letter written by the first respondent, she admitted the illicit relationship with the second respondent before marriage with the appellant. The first respondent denied above said letter being written by her. The learned Judge considering the signature of the first respondent in vakalat, counter and other documents in the Court with the signature found in Ex.P4 held that the same is not written by the first respondent. A cursory glance of Ex.P4 from the records, it is seen that the reasoning of the learned Judge is correct and does not warrant interference by this Court.

14. As far as Ex.P5 is concerned, it is a letter written by the second respondent to the first respondent. According to the appellant, he found a letter in the house of the first respondent and he took the photocopy of the same and left the original letter in the house of the first respondent. On the other hand, the appellant has produced original and marked the same through the first respondent when she gave evidence as RW.1, the portion of the letter relied on by the appellant is in different handwriting. The learned Judge compared the handwriting in the letter as well as the portion relied on by the appellant, held that they are not in the same handwriting and rejected the contention of the appellant. From Ex.P5, it is seen that the handwritings are different and the learned Judge has rightly rejected Ex.P5. It is pertinent to note that the appellant has not denied that the first respondent was sent to the house of the second respondent, for delivery of second child. The learned Judge has considered this fact and held that if really the respondents are having illicit relationship, the appellant would not have sent the first respondent to the second respondent's house for delivery of second child.

15. As far as the evidence of PW.2 is concerned, she is minor first daughter of the appellant and first respondent. A reading of the chief examination shows that her evidence does not prove adultery of first respondent. The learned Judge considering the evidence in entirety, did not accept and rejected the same, by giving valid reason. The appellant has not proved that the second respondent used to visit the first respondent's house often, when she was living separately and stayed with her from Sunday to Wednesday and the appellant has not proved that the first respondent went to the house of the second respondent during Saturday and Sunday and stay with the first respondent. The appellant has not substantiated his contention that the respondents are having illicit relationship and did not prove the adultery by the first respondent. On the other hand, both the respondents have deposed as RW.1 and RW.2 and denied all the allegations made by the appellant against the respondents. The Judgments relied on by the learned counsel appearing for the appellant is not applicable to the facts of the present case. The learned Judge has exercised his power conferred on him properly and there is no irregularity or illegality warranting interference by this Court.



16. In the result, this Civil Miscellaneous is dismissed by confirming the order dated 12.04.2011, made in IDOP.No.41 of 2008 on the file of the Principal District Judge, Pudukkottai.

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The Principal District Judge, Pudukkottai,

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