

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.S.A.No.36 of 1998
and
C.M.P.No.16009 of 1998

M.Mythili ... Appellant/Appellant/Respondent

Vs.

Meiyalagan ... Respondent/Respondent/Petitioner

Civil Miscellaneous Second Appeal filed under Section 28 of the Hindu Marriage Act read with Section 100 of the Civil Procedure Code, against the Judgment and Decree dated 14.10.1997 made in A.S.No.50 of 1997 on the file of the Principal District Judge, Nagai-Quide Milleth District at Nagapattinam confirming the Judgment and Decree dated 02.01.1997 made in H.M.O.P.No.40 of 1994 on the file of the I Additional Subordinate Judge, Nagapattinam.

For Appellant : M/s.G.M.Mani Associates

For Respondent : Mrs.Usharaman

Judgment

This Civil Miscellaneous Second Appeal has been filed against the Judgment and Decree dated 14.10.1997 made in A.S.No.50 of 1997 on the file of the Principal District Judge, Nagai-Quide Milleth District at Nagapattinam confirming the Judgment and Decree dated 02.01.1997 made in H.M.O.P.No.40 of 1994 on the file of the I Additional Sub Judge, Nagapattinam.

2. The case of the appellant is that the respondent had filed a petition for dissolution of marriage in H.M.O.P.No.40 of 1994 before the I Additional Subordinate Court, Nagapattinam, stating that the marriage between the appellant and the respondent was solemnized on 11.09.1983 at Karaikkal, Nehru Nagar as per the Hindu Rites and Customs, and out of the wedlock, two children were born to them. The appellant was not living with the respondent from 04.01.1992 and she left the matrimonial home when the respondent was away on duty. Thereafter,

the appellant had lodged a false complaint against the respondent at Velippalayam Police Station and obtained a document from him by coercion. Subsequently, the appellant filed a suit for maintenance in O.S.No.7 of 1992 which was decreed in favour of the her on 03.09.1993, and she also filed a suit in O.S.No.62 of 1992 on the file of the Subordinate Judge, Nagapattinam for execution of the sale deed as if there was an agreement for sale on the basis of the decree obtained at Vellippalayam Police Station. Due to the said conduct of the appellant, he seeks for dissolution of marriage solemnized between himself and the appellant.

3. Denying the allegations of the respondent, the appellant had filed a counter affidavit stating that from the date of marriage, the respondent never cared about the appellant and the children. The respondent purchased a plot in his name by selling the jewels of the appellant, and therefore, the appellant had requested him to transfer the property in her name. But, he refused to do so. Hence, a dispute was arose between the appellant and the respondent. There was a mediation, where the respondent had agreed to transfer the property in the name of the appellant on or before 05.02.1992. The said agreement was executed by the respondent before the mediators who prevailed the appellant to withdraw the complaint made against the respondent at Velippalayam Police Station for the attempt made on her life by pouring Kerosene and setting fire on her. The appellant for safety of her life went away to Karaikal and had been living there with her parents. Thereafter, she filed a suit for maintenance in O.S.No.7 of 1992 before the Family Court, Pondicherry and the same was allowed on 07.01.1994. The respondent had not complied to the said order and he had not even preferred any appeal against the same, and sought for dismissal of the divorce petition.

4. The I Additional Subordinate Judge, Nagapattinam, after considering the pleadings, oral and documentary evidence, allowed the HMOP in favour of the respondent on 02.01.1997. Aggrieved by the same, the appellant had preferred an appeal before the Principal District Court, Nagai-Quide Milleth District, Nagapattinam, but it was dismissed on 14.10.1997. Hence, the appellant has filed this appeal before this Court on the following substantial questions of law :-

“(A) Whether the respondent/petitioner has proved his case of desertion and cruelty by adducing any tangible, reliable and independent evidences to save his self interested deposition and marriage invitation?

(B) Whether the respondent/petitioner has proved that the appellant has deserted him, without any justifiable reason?

(C) Whether the Court below has considered the oral and documentary evidences of the parties in their proper prospective?

(D) Whether the respondent/petitioner could obtain the decree for divorce, purely based on vague allegations and that too, when he fails to prove the same by adducing enough and satisfactory evidences?

(E) Whether the respondent/petitioner has proved any ingredient contemplated under Section 13(1) & (1a) of the Hindu Marriages Act, to obtain a decree of divorce?"

5. Heard the learned counsel for the appellant and the learned counsel for the respondent, and perused the materials available on record.

6. On perusal of the records, it is seen that the marriage between the appellant and the respondent was solemnized on 11.09.1983, and out of the wedlock, two children i.e. one male and one female were born to them. After some periods, the respondent had sold the appellant's jewels and purchased a plot in his name, and therefore a dispute had arisen between the appellant and the respondent. It is also seen that due to the said dispute, the appellant left the matrimonial home and lodged a complaint against the respondent at Velippalayam Police Station in order to obtain the documents and transfer the property in her name. The respondent also agreed for transferring the property in the appellant's name and also given some documents to the appellant at Velippalayam Police Station. Thereafter, the appellant had filed a suit for maintenance in O.S.No.7 of 1992 before the Family Court at Pondicherry and also filed a suit in O.S.No.62 of 1992 before the Subordinate Judge at Nagapattinam for execution of the sale deed. The suit for maintenance was decreed in favour of the appellant on 03.09.1993 and subsequently, the respondent had filed a petition in HMOP.No.40 of 1994 for dissolution of marriage solemnized on 11.09.1983 between himself and the appellant.

7. On perusal of the order of the Court below, it is observed that after the marriage was solemnized on 11.09.1983 between the appellant and the respondent, they

both were living together for nearly 9 years, and thereafter, only because that the respondent had sold the appellant's jewels and purchased a plot in his name, the appellant had created some problems and stayed away from the respondent on 04.01.1992 without obtaining any consent from him. Moreover, it is observed that after the appellant had left him, she immediately lodged a complaint against the respondent at Velippalayam Police Station stating that the respondent had tried to pour kerosene on her and tried set fire on her, and due to the above said complaint, the respondent was also arrested on 05.01.1992.

8. It is further observed from the order of the Court below that when the respondent was arrested on 05.01.1992, he agreed by way of a written undertaking for transferring the property in the appellant's name, and even after which, the appellant had not chosen to come and live with the respondent, but had chosen file a suit for maintenance and a suit for execution of the sale deed by the respondent. Moreover, it is observed that after the maintenance suit was decreed in favour of the appellant on 03.09.1993, the appellant did not take any steps to live with the respondent and she had continued to live with her parents along with her children deserting the respondent, and therefore, the respondent had chosen to file a petition for divorce.

9. It is also found from the Judgment of the Court below that the appellant has deposed that she was interested to live with the respondent and for two times she had taken steps for reunion, but the respondent and her father-in-law had not accepted for the reunion. Further, in the cross examination, she has stated that she did not know when her father-in-law died. If the appellant really had an intention to live with the respondent and if she had taken genuine steps for reunion, she would have definitely known about the death of her father-in-law. But she had not taken any steps and she had continued to live with her parents all along even today. Hence, In view of the above observations, it is clear that the appellant never interested to live with the respondent and that there is no possibility of reunion between the parties. The petition filed by the appellant before the said Police Station was only to possess the property and had no inclination to join the respondent. So in the absence of any evidence to prove her intention of joining the respondent, this Court is not inclined to believe and accept the statement of her.

10. It is settled principle that the cruelty is not only body cruelty, but also the mere utterance of any word would also cause cruel then it is found to be cruelty. In this case, the appellant had forced the

respondent to give an undertaking before the concerned police and also filed maintenance petition when the respondent was ready to live with her, which would have definitely caused mental cruelty to the respondent. Therefore, the respondent with no other option had filed the petition seeking to grant divorce.

11. As the parties are living apart for two decades, there cannot be any possibility of reunion and hence, this Court is of the view that the marriage has irretrievably broken. The appellant's attitude was also proved by specific incidents and the relief has to be granted in favour of the respondent. Hence, this Court is not inclined to interfere with the Judgment of the Court's below.

12. Accordingly, this Civil Miscellaneous Second Appeal is dismissed and the substantial questions of law raised by the appellant are answered in favour of the respondent. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III-MDU)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal District Judge,
Nagai-Quide Milleth District, Nagapattinam

2.The I Additional Subordinate Judge,
Nagapattinam.

3.The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.G.M.Mani, Advocate, S.R.No.104128

C.M.S.A.No.36 of 1998

and

C.M.P.No.16009 of 1998

BR(CO)

CB(18/08/2020)