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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2019

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

C.M.S.A.No.6 of 2009

M.Muthukumarasamy .. Appellant/Respondent/Petitioner

Vs

Mohanavalli .. Respondent/Appellant/Respondent

Prayer : Civil Miscellaneous Second Appeal filed under Section 100 of the Civil Procedure Code against the fair and final order dated 30.06.2008 made in C.M.A.No.36 of 2006 on the file of the I Additional District Court, Coimbatore, reversing the fair and final order dated 09.01.2006 made in H.M.O.P.No.19 of 2001 on the file of the Sub Court, Pollachi.

For Appellant : Mr.T.Muruga Manickam, SC
For Ms.Zeenath Begum

For Respondent : No Appearance

JUDGMENT

This Appeal is directed against the judgment and decree dated 30.06.2008, passed in C.M.A.No.36 of 2006, by the learned I Additional District Court, Coimbatore, reversing the judgment and decree dated 09.01.2006, passed in H.M.O.P.No.19 of 2001, by the learned Sub Court, Pollachi.

2. While admitting this case on 23.03.2009, this Court framed the following substantial question of law for consideration;

"Whether the Appellate Court is justified in reversing the judgment of the trial Court with regard to the unwillingness of the appellant in getting reunion?

3. Learned Senior counsel appearing for the appellant/husband submitted that after the marriage was solemnized on 01.12.1995 between the appellant/husband and the respondent/wife, they were living together only for a period of



two years and even during the said period, there was no cordial relationship between them and she used to go her parents' house without even informing him. It is further submitted that when the respondent/wife was pregnant, all of a sudden, she brought a van and took all her belongings to her parents' house. Although the appellant/husband tried his best to pacify the respondent/wife, she was very adamant in taking all her belongings to her parents' house. It is further submitted that the appellant's father is owning 13 ½ acres of agricultural land and the respondent/wife insisted him to get the properties transferred to her name presuming that his father would transfer the same to his sisters. However, the appellant/husband had never accepted any of her demands and therefore, she had left the matrimonial home during December, 1997 and since then, she has been living only with her parents. Since the appellant/husband was living separately from 1997 and even after the girl child born to her she had refused to live with him, he was constrained to file H.M.O.P.No.19 of 2001 on the file of the learned Sub Court, Pollachi, for divorce, on the ground of cruelty and desertion.

4. The learned trial Court, considering all the facts and circumstances of the case, held that (i) no evidence was produced by the respondent/wife to show that she was compelled to leave from the matrimonial home; (ii) in her deposition she has admitted that she only insisted him for separate living; and (iii) she apprehended the alienation of properties in favour of appellant's sisters. Learned trial Court, finding fault with the respondent/wife that she was only responsible for leaving the matrimonial home, had allowed the divorce petition. Aggrieved thereby, when appeal was preferred, learned first appellate Court had reversed the same citing unacceptable reasons. Moreover, when the respondent/wife has not even filed any petition praying for restitution of conjugal rights, the learned first appellate Court ought not to have reversed the judgment and decree passed by the learned trial Court, more particularly, when the respondent/wife was not interested in a retrieval of the relationship, therefore, on this basis, it is contended that the judgment and decree passed by the learned first appellate Court reversing the judgment and decree passed by the learned trial Court granting divorce in favour of the appellant/husband is liable to be set aside.

5. Although this matter was listed on 11.06.2019, 13.06.2019, 18.06.2019, 20.06.2019, 21.06.2019, 25.06.2019 and 27.06.2019, no one has appeared on behalf of the respondent/wife, therefore, this Court is constrained to dispose of the case on the basis of the available materials before it as this appeal is of the year 2009.



6. I find merit on the above said submission of the learned counsel appearing for the appellant / husband. While answering the question whether she was interested in living with her husband separately, she had deposed before the trial Court by the respondent/wife in the affirmative. Therefore, the learned trial Court held that the respondent/wife demanded the transfer of properties in the name of her husband apprehending that the same would be transferred in the name of appellant's sisters. Taking note of all these facts, the learned trial Court has allowed the divorce petition dissolving the marriage between the parties. However, the learned first appellate Court, without even giving any cogent reasons for such findings of the learned trial Court, has reversed the same.

7. It is also further observed by the learned trial Court that the respondent/wife had even filed a suit for partition of those properties in the name of her minor child. When this Court put a question about the development of this case, learned Senior counsel for the appellant/husband stated that the above said partition suit was decreed in favour respondent/wife and when appeal was preferred, the same was also confirmed and thus, she is now enjoying properties as decreed in the partition suit. Filing of the suit by the wife on behalf of her minor girl child clearly shows that she was eyeing only on the properties of her husband, but, not on the welfare of her husband. Such conduct of the wife would definitely give mental cruelty to the husband.

8. In this context, it is relevant to refer to the judgment of the Hon'ble Apex Court in Parveen Mehta Vs. Inderjit Mehta [(2002) 5 SCC 706], wherein it is held that, for the purpose of Section 13(1)(i-a) of the Hindu Marriage Act, cruelty is to be taken as a behaviour by one spouse towards the other, which causes reasonable apprehension in the mind of the later that it is not safe for him or her to continue the matrimonial relationship with the other and mental cruelty is a state of mind and feeling with one of the spouses due to the behaviour or behavioural pattern by the other. Paragraph Nos.21 and 22 thereof are extracted below:-

21. Cruelty for the purpose of Section 13(1)(ia) is to be taken as a behavior by one spouse towards the other which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Mental cruelty is a state of mind and feeling with one of the spouses due to the behavior or behavioral pattern by the other. Unlike the case of



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physical cruelty the mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty it will not be a correct approach to take an instance of misbehavior in isolation and then pose the question whether such behaviour is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other.

22. Judged in the light of the principles discussed above what we find is that right from the beginning the matrimonial relationship between the parties was not normal; the spouses stayed together at the matrimonial home for a short period of about six months; the respondent had been trying to persuade the appellant and her parents to agree to go for proper medical treatment to improve her health so that the parties may lead a normal sexual life; all such attempts proved futile. The appellant even refused to subject herself to medical test as advised by the doctor. After 21st June, 1987 she stayed away from the matrimonial home and the respondent was deprived of her company. In such circumstances, the respondent who was enjoying normal health was likely to feel a sense of anguish and frustration in being deprived of normal cohabitation that every married person expects to enjoy and also social embarrassment due to the behavior of the appellant. Further, the conduct of the appellant in approaching the police complaining against her husband and his parents and in not accepting the advice of the superior judicial officer Mr.S.K.Jain and



repair because of the emotionally dead relationship. Thus, in my considered view, there is no chance for both parties to live together as they have been living separately for more than 22 long years. In such a context, I am of the considered view that the decree of Divorce is the only remedy to be passed, so that the parties may choose their life of their own way, when there has been no scope for their reunion.

11. Accordingly, in such view of the matter, by answering the substantial question of law in favour of the appellant/husband, the judgment and decree passed by the learned first appellate Court are set aside and the judgment and decree passed by the learned trial Court are restored. Consequently, for the reasons stated above, the Civil Miscellaneous Second Appeal is allowed. No Costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge,
The Sub-Court, Pollachi.
2. The I Additional District Judge,
Additional District Court,
Coimbatore.

Copy To

The Section Officer,
V.R. Section, High Court,
Madras. (2 copies)

+1cc to Ms. Zeenath Begum, Advocate, S.R.No. 54555

C.M.S.A.No.6 of 2009

VG I (CO)
GN (27/11/2019)