

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.09.2019
Delivered on : 06.09.2019

CORAM :

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

C.M.S.A. Nos.1 and 2 of 2010
and
M.P. No.1 of 2010

S.Amutha

... Appellant
in both appeals

Vs.

C.Manivanna Bhupathy

... Respondent
in both appeals

Prayer: Civil Miscellaneous Second Appeals in C.M.S.A. Nos.1 and 2 of 2010 filed under Section 28 of the Hindu Marriage Act, 1955 r/w. Section 100 of Code of Civil Procedure, praying to set aside the judgment and decree dated 20.08.2009 (wrongly mentioned as 21.11.2008 in prayer) made in C.M.A.Nos.4 and 5 of 2009, respectively, on the file of the Additional District Court-cum-Fast Track Court No.I, Erode, confirming the judgment and decree dated 28.11.2008 (wrongly mentioned as 20.08.2009 in prayer) made in H.M.O.P.Nos.76 and 188 of 2005 on the file of the Principal Sub Court, Erode.

For Appellant : Mr.K.Thilageswaran
in both appeals

For Respondent : Mr.I.C.Vasudevan
in both appeals

C O M M O N J U D G M E N T

Marriages are made in heaven, but the married fight their life out in the law Courts.

2.Manivanna Bhupathy ('Bhupathy' for brevity) got married to Amutha on 15.11.1992. More than five years, they were issueless. However, a son, Aravinth was born on 02.01.1996 and a daughter, Suganthi was born on 14.10.1997. Bhupathy is working as Health Inspector in the Department of Public Health & Preventive Medicine and Family Welfare. As Health Inspector, Bhupathy was required to visit various villages and attend to

the medical needs of the villagers. Many times, he would have to take a staff nurse along with him for attending to the emergent needs of villagers. However, Amutha believed that, Bhupathy was having illicit intimacy with one Krishnaveni and so, she sent representations to the higher officials of the Department, complaining about her husband. This strained their marital relationship. According to Bhupathy, Amutha left the matrimonial home on 19.04.2005, leaving their two children behind but according to Amutha, she was driven out of the matrimonial home by Bhupathy.

3. Bhupathy filed H.M.O.P.No.76 of 2005 in the Sub Court, Erode, for divorce on the ground of cruelty. As a counter blast, Amutha filed H.M.O.P.No.188 of 2005 in the Sub Court, Erode, for restitution of conjugal rights. Amutha also filed M.C.No.160 of 2005 in the Family Court, Coimbatore, under Section 125 Cr.P.C., claiming maintenance from Bhupathy, in which, an order was passed on 12.12.2006, directing Bhupathy to pay Rs.1,250/- per month as maintenance. Amutha, also obtained an order in I.A.No.343 of 2005 in H.M.O.P.No.76 of 2005 from the Sub-Court, Erode, in which, Bhupathy was directed to pay a maintenance amount of Rs.1,300/- per month pendente lite. Not content with this, Amutha initiated proceedings under 'Protection of Women from Domestic Violence Act, 2005' ('D.V. Act' for brevity) in CrI.M.P.No.5980 of 2007 before the Judicial Magistrate No.II, Erode, claiming various reliefs, including right of residence and maintenance.

4. Trials proceeded before the Sub-Court, Erode, in the matrimonial cases and before the Judicial Magistrate Court No.II, Erode, in the D.V. Act case.

5. In the D.V. Act proceedings, Amutha examined herself as P.W.1 and one Sakthivel was examined as P.W.2. On the side of Amutha, Exhibits P1 to P32 were marked. Bhupathy examined himself as R.W.1 and marked Exhibits R1 to R11. After considering the evidence adduced by the parties, the learned Judicial Magistrate No.II, Erode, passed final orders in CrI.M.P.No.5980 of 2007 (D.V. Act case) on 27.06.2008, disallowing the claim of maintenance on the ground that maintenance has been ordered by the Family Court, Coimbatore, in M.C.No.160 of 2005 and interim maintenance has been ordered by the Sub-Court, Erode, in I.A.No.343 of 2005 in H.M.O.P. No.76 of 2005. Similarly, the claim of Amutha for return of her sridhana articles and 50 sovereigns of jewellery given at the time of marriage was also negatived on the ground that she did not adduce any evidence on that aspect. However, the learned

Judicial Magistrate directed Bhupathy to provide accommodation for Amutha in Door No.45, Main Road, Nagarajapuram, Thiruvalluvar Nagar, Arachalur.

6.Challenging the order dated 27.06.2008, passed by the learned Judicial Magistrate No.II, Erode, in Crl.M.P.No.5980 of 2007 (D.V. Act case), Bhupathy filed an appeal in C.A.No.176 of 2008 and Amutha filed an appeal in C.A.No.191 of 2008 under Section 29 of the D.V. Act, before the Principal District and Sessions Court, Erode.

7.Now, reverting to the matrimonial proceedings in the Sub-Court, Erode, joint trial was conducted in H.M.O.P.No.76 of 2005 (petition for divorce, filed by Bhupathy) and H.M.O.P.No.188 of 2005 (petition for restitution of conjugal rights, filed by Amutha), in which, Bhupathy examined himself as P.W.1 and his father Chidambaram was examined as P.W.2. On the side of Bhupathy, Exhibits P1 to P3 were marked. Amutha examined herself as R.W.1 and marked Exhibits R1 to R4. After considering the evidence adduced by the parties, the Sub-Court, Erode, by a common judgment and decrees dated 28.11.2008, allowed H.M.O.P.No.76 of 2005 and granted a decree of divorce and dismissed H.M.O.P.No.188 of 2005, the petition for restitution of conjugal rights.

8.Challenging the judgment and decree dated 28.11.2008, passed by the Sub-Court, Erode, Amutha filed two appeals, viz., C.M.A.No.4 of 2009 against H.M.O.P.No.76 of 2005 and C.M.A.No.5 of 2009 against H.M.O.P.No.188 of 2005, before the Principal District and Sessions Court, Erode.

9.The Principal District and Sessions Judge, Erode, made over the two appeals in C.M.A.Nos.4 and 5 of 2009 and also the two appeals in C.A.Nos.176 and 191 of 2008, arising under the D.V. Act, to the Additional District and Sessions Court (Fast Track Court No.I), Erode. Fortunately, all the four appeals were heard by the same Judge. The Additional District and Sessions Judge, Fast Track Court No.I, Erode, by a common judgment dated 20.08.2009, allowed C.A.No.176 of 2008, filed by Bhupathy, and set aside the order passed by the Judicial Magistrate No.II, Erode, in Crl.M.P. No.5980 of 2007, directing Bhupathy to provide accommodation for Amutha in Door No.45, Main Road, Nagarajapuram, Thiruvalluvar Nagar, Arachalur. The said Court dismissed C.A.No.191 of 2008, filed by Amutha, seeking maintenance under the D.V. Act and confirmed the order of the Judicial Magistrate No.II, Erode, on this aspect.

10.Challenging the common judgment dated 20.08.2009, passed in C.A.Nos.176 and 191 of 2008, Amutha has preferred two criminal revision cases in CrI.R.C.Nos.641 and 642 of 2010 before this Court under Section 397 r/w. 401 Cr.P.C.

11.On the same day, i.e., 20.08.2009, the Additional District and Sessions Judge, Fast Track Court No.I, Erode, by separate judgment and decrees, dismissed C.M.A.Nos.4 and 5 of 2009, that were filed by Amutha, challenging the common judgment passed by the Sub-Court, Erode, in the matrimonial cases, granting the relief of divorce and denying the relief of restitution of conjugal rights. Challenging this judgment, Amutha has preferred these two appeals, viz., C.M.S.A. Nos.1 and 2 of 2010, before this Court.

12.On the orders of the Hon'ble Chief Justice, these two Civil Miscellaneous Second Appeals and the two Criminal Revision Cases were directed to be posted before this Court and hence, they were heard together.

13.At this juncture, it may be relevant to mention about the trajectory of the proceedings in M.C.No.160 of 2005, that was filed by Amutha, under Section 125 Cr.P.C. in the Family Court, Coimbatore. As stated above, the Family Court, Coimbatore, by order dated 12.12.2006, had directed Bhupathy to pay Rs.1,250/- per month as maintenance. Not satisfied with that, Amutha filed an enhancement petition before the Family Court, Coimbatore, in which, the maintenance amount was enhanced from Rs.1,250/- to Rs.3,700/- per month, challenging which, Bhupathy filed CrI.R.C.No.894 of 2012 and Amutha filed CrI.R.C.No.1289 of 2012 in this Court. This Court heard both the revision cases and by order dated 11.01.2013, dismissed CrI.R.C.No.894 of 2012, that was filed by Bhupathi and enhanced the maintenance amount to Rs.4,000/- per month in CrI.R.C.No.1289 of 2012, that was filed by Amutha. Now, it is reported that, Bhupathy is paying Rs.9,000/- every month to Amutha and their two children have attained the age of majority.

14.Heard Mr.K.Thilageswaran, learned counsel for Amutha and Mr.I.C.Vasudeven, learned counsel for Bhupathy.

15.Mr.K.Thilageswaran formulated the following substantial questions of law.

(i) When the wife was driven out on 19.04.2005, can it be stated that she had deserted her husband ?

(ii) Can the complaint made by the wife to the police and higher authorities for reunion be construed as inflicting cruelty on the husband ?

16.Mr.K.Thilageswaran placed strong reliance on the letter dated 02.05.2005, written by Amutha to Bhupathy, a copy of which has been marked as Ex.R1 in the matrimonial proceedings. He took this Court through the entire letter to show that, even at earliest point of time, Amutha has stated that she was driven away from the matrimonial home by Bhupathy on 19.04.2005, however, the Sub-Court, Erode, has failed to appreciate the same in the right perspective.

17.This Court carefully perused the letter dated 02.05.2005 (Ex.R1). It is a copy of a hand-written letter running to six pages. It is in evidence that the original of the said letter has been sent by Amutha to Bhupathy, by registered post, and she has retained a copy of it. In that letter, Amutha has made lot of allegations against Bhupathy and has alleged that Bhupathy is having illicit intimacy with one Baby.

18.It is the specific case of Bhupathy in the divorce petition that Amutha was alleging that he was having illicit intimacy with one Krishnaveni and that she had written about it to his official superiors. He has stated this fact in Para No.6 of his divorce petition in H.M.O.P.No.76 of 2005. In Para No.6 of the counter filed by Amutha in the divorce petition, she has stated that she had wrongly given the name of Krishnaveni in the complaint, given by her to Bhupathi's office, and the name of the staff is Baby @ Dhanalakshmi. The fact that the complaint given by Amutha was taken seriously by the Department and an enquiry was conducted by the Deputy Director of the Department stands established vide the proceedings of the Deputy Director dated 13.06.2005, which has been marked as Ex.R3.

19.In the cross-examination, Amutha admitted that, as Health Inspector, it is a part of Bhupathy's duties to go around villages for inspection; in the complaint lodged with the Department, she had levelled allegations of illegal intimacy with one Krishnaveni, inadvertently. She has further admitted in the cross-examination that Dhanalakshmi, against whom she has made allegations, is a staff nurse, who has two grown up children. It was suggested to her that Dhanalakshmi is elder in

age than Bhupathy, for which, she has stated that she does not know.

20.Now, coming to the letter dated 02.05.2005 (Ex.R1), Bhupathi has accepted the receipt of the same. However, to the questions put by Amutha's counsel in the cross-examination, Bhupathy has stated that, on the complaint given by Amutha in Arachalur Police Station, he went there with his two children for enquiry; on the complaint given by Amutha in All Women Police Station, Coimbatore, he went there for enquiry; since, the police threatened him, he gave in writing that he will rejoin Amutha; thereafter, he received the letter dated 02.05.2005 from Amutha, by registered post; in that, she has stated that she wants to rejoin; he did not give any reply to that letter. These answers given by Bhupathy in the cross-examination clearly show that, even prior to sending of the letter dated 02.05.2005, Amutha has gone to police stations and to Bhupathi's office and has lodged complaint against him, subjecting him to harassment.

21.Apart from the ipse dixit of Amutha that Bhupathy was having illicit intimacy with Dhanalakshmi @ Baby, there is absolutely no material worth its salt to infer that, Bhupathy was keeping the staff nurse as his concubine. Amutha herself has admitted in the cross-examination that the staff nurse has two grown up children. The nature of Bhupathy's duties is such that he would have to go to villages for inspection with a staff nurse and even if he were to take the staff nurse as a pillion in his motor-bike, it cannot be inferred that he was keeping her. The allegations in the letter dated 02.05.2005 (Ex.R1) are themselves not substantive evidence and they have to be proved in a manner known to law, which has not been done in this case. For example, the allegations in an FIR cannot, by itself, be sufficient to convict the accused. The allegations have to be proved either by direct evidence or through circumstantial evidence. If the wife is to suspect her husband of infidelity and complain about it to the police and to her husband's employer without sufficient material and on account of it, if the husband is subjected to police enquiries and departmental enquiries, it would indubitably amount to inflicting cruelty. At one stage, Amutha alleged that, Bhupathy was having affair with Krishnaveni and later, she took a stand that she had erroneously given the name as Krishnaveni, but, it was Dhanalakshmi @ Baby. Coming to the contention of Mr.K.Thilageswaran that Amutha was driven away from the matrimonial home on 19.04.2005, except the ipse dixit of Amutha, there is no other material to support this plea.

22.In the result, this Court does not find any infirmity in the judgments passed by the two Courts below, warranting interference. Therefore, these two Civil Miscellaneous Second Appeals are dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

This Court, by separate order, has dismissed Crl.R.C.Nos.641 and 642 of 2010, today.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

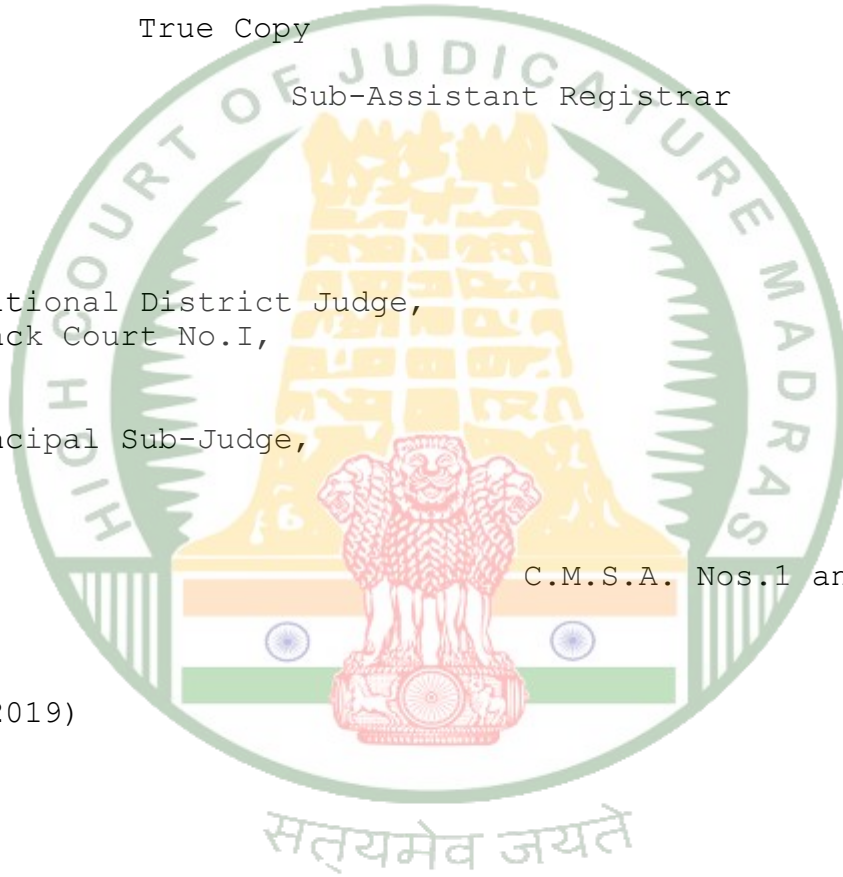
mkn

Copy to :

- 1.The Additional District Judge,
Fast Track Court No.I,
Erode.
- 2.The Principal Sub-Judge,
Erode.

C.M.S.A. Nos.1 and 2 of 2010

SSV(CO)
SP(11/11/2019)



WEB COPY