

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2019

CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

CMSA NO.1 OF 2005
AND CMP NO.217 OF 2015

K.Arunachalam

... Appellant

VS.

Sivaparvathi

.... Respondent

PRAYER: Civil Miscellaneous Second Appeal filed under Section 28 of the Hindu Marriage Act and under Section 100 of Civil Procedure Code against the judgment and decree dated 24.12.2003 made in A.S.No.62 of 2003 on the file of the District Court, Nagapattinam, confirming the judgment and decree dated 06.01.2003 made in HMOP No.57 of 2001 on the file of the Principal Sub Court, Myladuthurai.

For Appellant : Mr.S.R.Sundaram

For Respondent : Mr.P.Selvaraj

J U D G M E N T

Challenging the concurrent findings of the Courts below, the appellant / husband preferred the above Civil Miscellaneous Second Appeal.

2. Short facts as stated are that the appellant/husband filed a petition for divorce on the grounds of cruelty. According to the appellant/husband, the respondent/wife demanded setting up a separate home. On 07.01.2001, she broke the chain in her neck and left the house. Again, came on 11.01.2001 and picked up quarrel and demanded the expenses done by her parents towards solemnization of the marriage between them. Despite negotiations, the respondent / wife refused to return home, but lodged a false complaint against the appellant / husband and his family members for dowry harassment before the Police on 05.03.2001. On the basis of the complaint, the appellant/husband and his family members were called to Police Station for enquiry, due to which, the appellant/husband family suffered ignominy and mental agony. Pursuant to the complaint, the respondent / wife has taken her books, certificates and other

articles and also taken her daughter along with her. Thereafter, the respondent/wife caused damage to his reputation by picking up quarrel at his office. Therefore, he sought divorce on the grounds of cruelty. The said allegations were denied by the respondent / wife. On the basis of the oral and documentary evidence, the Trial Court came to the conclusion that the element of cruelty was not proved by the husband and dismissed the petition for divorce. The said decree and judgment was confirmed by the Lower Appellate Court. Challenging the same, the present Civil Miscellaneous Second Appeal has been preferred by the appellant / husband.

3. Heard the submissions made on either side and perused the materials available on record.

4. This Civil Miscellaneous Second Appeal was admitted on the question of law that "when pleading and evidence placed before Court, prima facie, show that wife is guilty of nagging her husband, would it not constitute a ground for cruelty, as held by the Hon'ble Supreme Court in A.JAYACHANDRA VS. ANEEL KAUL [2005 (1) CTC 215].

5. On a perusal of the evidence given by the appellant/husband, it is seen that the marriage had taken place on 16.06.1999 and the respondent/wife left the matrimonial home on 07.01.2001. Between this period, there is no iota of allegation that the wife was nagging him and caused mental agony to him. In his petition, he would state that the respondent/wife was demanding him to set up a separate home. But in the evidence, there is no averment about the demand of setting up a separate home and the entire evidence deals with the incidents after the police complaint lodged by the respondent/wife. In his evidence, he would state that in the complaint dated 05.03.2001, she wanted the certificates and her child from his house. He would further depose that the respondent/wife herself kept the certificates under lock and key and he has no objection to take the certificates and other articles from the Almerah. Accordingly, she has taken those certificates and her daughter. After this, on 19.07.2001, the respondent/wife has lodged a complaint against him. It is relevant to note that what was the complaint given on 19.07.2001. During the cross examination of respondent as R.W.1 she would state that she had given a complaint to the All Women Police Station for restitution of conjugal rights and that she had not given any complaint for dowry harassment. Therefore, the complaint dated 19.07.2001 was not on any offence committed by the appellant/husband, but only for restitution of conjugal rights. Based on these complaints, the above divorce petition came to be filed. The appellant/husband would allege that because of the police complaint give by the respondent / wife, his family members were

called to Police Station and were enquired, which caused him mental agony and it would amount to cruelty, which will entitled him for divorce.

6. The Courts below have considered the fact as to whether the entire family members including his unmarried and widowed sisters were called to Police Station, causing dis-reputation and mental agony to him. There was no clear evidence as to the statement that the sisters of the appellant/husband were brought to the Police Station. It was held that the appellant/husband has not proved through independent witnesses or documents that the entire family members were called to Police Station, which caused dis-reputation to his family. Other than the police complaint, there is no other allegation of harassment or mental agony.

7. The Courts below have also found that between the date of marriage viz., 16.06.1999 and the date on which she left the matrimonial home viz., 07.01.2001, there is no allegation of nagging. On the other hand, both the appellant/husband and respondent/wife lived together and the respondent bore 2 children for him. In that event, it was presumed that there is no dispute between the husband and wife. Even if it was there, they were living together as husband and wife shows that it is only normal wear and tear in the family life. When the respondent/wife left the home, she was 8 months pregnant and the first child was 10 months old. The birth of the children out of their wedlock would go to show that they lived happily as husband and wife. Based on the same, the petition for divorce was dismissed as it does not make out a ground of cruelty, much less mental cruelty.

8. This Civil Miscellaneous Second Appeal was admitted on the substantial question of law that whether nagging by wife will amount to cruelty or not. In the instant case, from the narration of the above factual details, there is absolutely no evidence that the wife was nagging her husband. Even though there is a pleading that the wife demanded separate home, it will not constitute a ground for cruelty, much less mental cruelty, without there being any evidence to prove. Therefore, I find that the appellant/husband has not made out any case for cruelty and much less, pleaded nagging of the wife, constituting cruelty. Hence, the question of law is answered against the appellant/husband.

9. At this juncture, learned counsel for the appellant/husband would offer to pay a sum of Rs.5,00,000/- (Rupees Five Lakhs Only) to the respondent/wife and seek divorce.

10. Such offer was repudiated by the respondent/wife, thereby, the learned counsel for the respondent/wife would submit that children are studying in College and they do not want to loose the status. Learned counsel for the respondent/wife would also submit that the respondent/wife obtained a decree for restitution of conjugal rights. Further, she has also filed a petition for maintenance for herself and her children. But the appellant/husband had successfully protracted the proceedings for the past 16 years. Therefore, sought enforcement of the decree obtained by the respondent/wife for restitution of conjugal rights. However, the maintenance petition is still pending and the respondent has to work out her remedy in that petition.

11. In fine, the Civil Miscellaneous Second Appeal is dismissed with the above observations and directions. No costs. Consequently, connected civil miscellaneous petition is closed.

TK

05.04.2019

FOR BEING MENTIONED

The matter having been listed on 30.04.2019 for being mentioned, in pursuance of order dated 05.04.2019 and made herein and in the presence of the aforesaid counsel on either side, the Court made the following Order:

This matter is listed today under the caption "for being mentioned" at the instance of the parties.

2. The parties have arrived at a mutually agreeable settlement and filed a joint memorandum of compromise dated 30.04.2019, which reads as under:

"JOINT MEMORANDUM OF COMPROMISE

The abovenamed Parties mutually agree, enter and sign this Joint Memorandum of Compromise hereunder:-

1. The Appellant K.ARUNACHALAM herein pays a sum of Rs.10,00,000/- (Rs.Ten Lakhs Only) by:-

1. Account Payee Demand Draft No.894175944 dated 26.04.2019 drawn on Indian Overseas Bank for a sum of Rs.5,00,000/- (Rs.Five Lakhs Only) in favour of Sivaparvathi, the Respondent herein.

II.Account Payee Demand Draft No.894175951 dated 26.04.2019 drawn on Indian Overseas bank for a sum of Rs.5,00,000/- (Rs.Five Lakhs Only) in favour of Sivaparvathi, the Respondent herein.

III.Both the abovesaid Two Drafts totally valued for Rs.10,00,000/- (Rs.Ten Lakhs Only) is received by K.Sivaparvathi, the Respondent herein.

2.The Appellant K.Arunachalam pays this Rs.10,00,000/- (Rs.Ten Lakhs only) being the ONE TIME PAYMENT AND SETTLEMENT to K.Sivaparvathi who has accepted and admitted the same being the ONE TIME PAYMENT AND SETTLEMENT in full quits.

3.By receipt and accepting this ONE TIME PAYMENT AND SETTLEMENT, Sivaparvathi solemnly declares and confirms that she has no claims, demands or dues whatsoever either past, present or future from and against K.Arunachalam.

4.K.Sivaparvathi declares and confirms that she has no further claims, demand or dues past, present or future against K.Arunachalam. K.Sivaparvathi solemnly declares and confirms that this receipt and acceptance of ONE TIME PAYMENT AND SETTLEMENT is received for herself and for her two daughters named A.Rajalakshmi and A.Pooja Vinothini.

5.Sivaparvathi declares and undertakes that she will take care of the welfare of her two daughters above named.

6.K.Sivaparvathi hereby agrees and consents for a Divorce and prays for Divorce Decree to be passed and the marriage solemnised on 16.06.1999 between herself with K.Arunachalam be dissolved.

It is therefore humbly prayed that this Hon'ble Court may be pleased to record this Joint Memorandum of Compromise and Grant Decree of Divorce and thus render justice.

Dated at Chennai this 30th day of April, 2019."

3. As per the Joint Memorandum of Compromise, the appellant paid a sum of Rs.10,00,000/- (Rupees Ten Lakhs Only) by way of two demand drafts bearing Nos.894175944 and 894175951 respectively, dated 26.04.2019, drawn on Indian Overseas Bank, for a sum of Rs.5,00,000/- EACH respectively (in total Rupees Ten Lakhs Only) and receipt of the same is acknowledged by the respondent. The Joint Memorandum of Compromise dated 30.04.2019 and the copies of the demand drafts are taken on record and shall form part of the judgment.

4. In fine, the order passed by this Court on 05.04.2019 in this Civil Miscellaneous Second Appeal stands withdrawn. In terms of the compromise now arrived at, the Civil Miscellaneous Second Appeal is allowed and a decree of divorce is granted dissolving the marriage solemnised between the parties on 16.06.1999.

5. Registry is directed to issue a decree and judgment in favour of the appellant.

(*) Copy of the Joint Memo of Compromise dated 30.04.2019 is enclosed herewith

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

TK

To

1) The District Court,
Nagapattinam.

2) The Principal Sub Court,
Myladuthurai.

+1 cc to M/s.P.Selvaraj, Advocate, S.R.No.42861

+1 cc to M/s.S.R.Sundaram, Advocate, S.R.No.42766

CMSA NO.1 OF 2005

RP(CO)
SSM(03/10/2019) .