

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2019

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A. No. 1546 of 2016

K.Susheela Appellant/Respondent

Vs.

Thambi @ C.Balasubramaniam Respondent/Petititioner

PRAYER : Appeal filed under Section 19 of Family Courts Act against the fair and decretal order dated 28.09.2015 made in H.M.O.P.No.742 of 2010 on the file of Additional Family Court, Coimbatore.

For Appellant : Mr.E.D.Sethupathi

For Respondent : Mr.P.Saravana Sowmiyan

JUDGMENT

(Delivered by M.M.SUNDRESH., J)

This appeal has been preferred by the appellant, who is the respondent in H.M.O.P.No.742 of 2010 challenging the judgment and decree on the question of cruelty while rejecting on the ground of desertion.

2. The appellant and the respondent married on 25.03.1996. A male child was born on 09.05.1997. It is the case of the respondent that from the year 2002 onwards, the appellant was not living with the respondent. The appellant was not inclined to have any physical relationship with him. Further more, he was abused.

3. The trial Court after having found that the appellant was not living with the respondent from 07.05.2004 onwards and thus living with her mother, nonetheless dismissed the petition filed on the ground of desertion. However, it was pleased to hold that the conduct of the appellant would amount to cruelty on two grounds, namely, she was not having any physical relationship with the respondent from 07.05.2004 and her allegation that he was living with one Saraswathi has not been proved. Challenging the same, the present appeal has been filed.

4. The learned counsel appearing for the appellant submitted that in a separate proceeding initiated by the appellant for maintenance, a joint vakalat has been filed by the respondent and the said Saraswathi. Thus, from the above, it could be seen that he was not in relationship with her notwithstanding the existence of a valid marriage between the appellant and the respondent. Secondly, it is submitted that the fact that the appellant was not having any physical relationship with the respondent cannot be a factor to come to a conclusion that she exerted cruelty on him, in view of the fact that the case projected her for desertion has been rejected.

5. The learned counsel appearing for the respondent would submit that the Court below has given a factual finding with respect to the appellant living separately from 07.05.2004 and therefore, the finding that the appellant was not having any physical relationship with him is correct. Merely because, a joint vakalat has been filed in a collateral proceedings initiated by the appellant against the respondent and the said third party, it cannot be presumed that the respondent was in relationship with her.

6. We do not find any merit in this appeal. The Court below has given a categorical factual finding that it is the appellant who left the respondent and living separately from 07.05.2004 onwards. Secondly, it was further held that there is no material to hold that the respondent was living in adultery.

7. We concur with the submission made by the learned counsel appearing for the respondent that merely because the respondent has filed a joint vakalat along with said third party, it cannot be said that he was having illicit relationship with her. There cannot be such a presumption either on fact or in law. Furthermore, the appellant also made a complaint against the respondent and the aforesaid third party, without support of any material evidence. These aspects have been taken note of correctly by the Court below in coming to the conclusion that the conduct of the appellant would amount to cruelty.

8. Thus, we do not find any merit in this appeal and the Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected C.M.P.Nos. 11738 of 2016 and 1303 of 2017 are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ssm

To

- 1.The Judge,
Additional Family Court,
Coimbatore.
- 2.The Section Officer,
VR Section, High Court, Madras-104.

+1cc to Mr.P.Saravana Sowmiyan, Advocate sr.102299

C.M.A.No. 1546 of 2016

gmr[co]
srg 10/02/2020

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