

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE C.SARAVANAN

C.M.A. No. 400 of 2015

Vengadessane ... Appellant / Petitioner

Vs.

1. Manikavally
2. Karaikal Municipality
Rep. By its Commissioner,
Dr.Ambedkar Street,
Karaikal Town & Munsif ... Respondents

Prayer: Appeal filed under Section 19 of Family Court Act against the fair and decretal order dated 09.01.2014 in M.O.P.No.6 of 2011 on the file of the Learned District Judge, Karaikal.

For Appellant : Mr.Sai Krishnan
for M/s.Sai Bharath and Ilan

For Respondent : No appearance

JUDGMENT

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

The appellant is the husband of the first respondent. He filed a petition seeking dissolution of marriage before the District Court, Karaikal, inter alia, alleging that the first respondent has committed cruelty. The Court below dismissed the petition by taking note of the submission made by the first respondent that she is ready and willing to live with the appellant, provided a separate family is established for them, without any interference by her in-laws, more so because of the space constraint. Challenging the same, the present appeal is filed.

2. Learned counsel appearing for the appellant has submitted that the Court below has misdirected itself by treating the petition as one filed for restitution of conjugal rights. The appellant made specific allegation of cruelty on the part of the

first respondent. He stated that the first respondent has given a complaint against the appellant and it is the first respondent who left the matrimonial home on her own volition. These factors have not been taken note of by the Court below. Further, submission has been made that over the years both the parties are living separately. Thus, the learned counsel submitted that the appeal will have to be allowed.

3. Despite service of notice, none appears on behalf of the first respondent.

4. We do not find any error in the order passed by the Court below. The Court below was conscious about the relief sought for by the appellant. The Court below has come to a conclusion that no cruelty as alleged is made out. A mere complaint given to the police station per se cannot be termed as a ground for divorce on the ground of cruelty. The Court took note of the fact that it was agreed upon between the parties that nucleus family will be set up after the marriage. The home in which the appellant is residing along with the parents and sister is not sufficient to accommodate the first respondent. She has also deposed that she is always ready and willing to join the appellant, provided a separate matrimonial home is established. Thus, we find that no ground of cruelty is made out.

5. Accordingly, the appeal stands dismissed. No costs. However, we make it clear that it is well open to the appellant to file a separate petition on the ground of desertion, if so advised.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ssm

To:

The District Judge,
Karaikal.

+1 cc to M/s.Sai & Bharath, Advocate, S.R.No.18417

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RSF(CO)
SSM(10/06/2019)