

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.S.A.No.16 of 2015

and

M.P.No.1 of 2015

Kavitha ... Appellant/Respondent/Respondent

Vs.

Selvakumar ... Respondent/Appellant/Petitioner

Civil Miscellaneous Second Appeal is filed under Section 28 of the Hindu Marriage Act read with under Section 100 of the Civil Procedure Code, against the fair and decreetal order dated 12.02.2015 made in C.M.A.No.23 of 2013 on the file of the Principal District Judge, Salem, reversing the fair and decreetal order dated 24.06.2013 made in HMOP.No.166 of 2010 on the file of the Subordinate Judge, Mettur.

For Appellant : Mr.J.Ramakrishnan
For Respondent : Mr.R.C.Paul Kanangaraj
No Appearance

Judgment

This Civil Miscellaneous Second Appeal has been filed against the fair and decreetal order dated 12.02.2015 made in C.M.A.No.23 of 2013 on the file of the Principal District Judge, Salem, reversing the fair and decreetal order dated 24.06.2013 made in HMOP.No.166 of 2010 on the file of the Subordinate Judge, Mettur.

2. The case of the appellant is that the marriage between the appellant and the respondent was solemnized on 19.08.1998 as per the Religions and Caste Custom at Thippireddippatti Thirumanamandapam, Kolathur, Mettur Taluk. After the marriage, they started their matrimonial life in the native place of the respondent at Kolnaickenpatti. They were living as husband and wife only for 21 days and after that the appellant had requested the respondent to come and live with her in a separate residence at Kolathur, which the respondent had not accepted. Hence, the appellant without getting permission from the respondent left

the matrimonial home and lived with her parents at Kolathur for about one and half years without any conduct of the respondent. In February 2000, the respondent lodged a complaint in the Mettur Police Station to take steps for reunion with the appellant, where they were advised to live in a separate residence near Mettur Chinnapark. As per the advise, they lived in the said place only for 15 days and thereafter, the appellant again left the matrimonial home and started living with her parents at Kolathur. On 20.01.2003, the respondent went to the house of the appellant and asked the appellant to come and live with him, but the family members of the appellant threatened the respondent saying that he has to come to their residence at Kolathur and live at their residence with the appellant, otherwise they would put him behind the bar by giving a complaint under Dowry Prohibition Act and they would kill him. The respondent had reported the same to the Deputy Superintendent of Police, Mettur on 20.01.2003, but however he had lost all his hope that he could not live with the appellant anymore and therefore, he was forced to remarry one Govindammal on 03.05.2004.

3. It is the further case of the appellant that on 07.06.2004, the appellant gave a complaint in the All Women Police Station at Mettur to advise the respondent to live with her in a separate house. But the respondent did not accept the same as he had no sufficient income, he is the only son of his parents and he has to take care of them. Subsequently, the appellant had filed a petition for restitution of conjugal rights in HMOP.No.68 of 2005, whereas the respondent had filed a petition for divorce in HMOP.No.93 of 2005. During the pendency of the petitions, the appellant had lodged a complaint against the respondent in the All Women Police Station at Mettur and therefore, a case in Cr.No.5 of 2009 under Section 498(A) 341, 506(ii), 294(b) and 494 IPC was registered and the respondent was arrested. Subsequently, the respondent was released on bail, and thereafter, a charge sheet was filed and the said case was taken on file as C.C.No.117 of 2009 by the Judicial Magistrate No.1, Mettur. After the trial, the case was dismissed and the respondent was acquitted from the charges. Thereafter, the said Govindammal filed a petition in HMOP.No.152 of 2009 for dissolution of marriage solemnized between herself and the respondent, and the same was allowed.

4. It is also the case of the appellant that the petitions filed by the appellant and the respondent in HMOP.No.68 of 2005 and HMOP.No.93 of 2005 came to be dismissed, and the respondent again filed a petition for divorce in HMOP.No.166 of 2010 before the Sub Court, Mettur after paying the maintenance of Rs.2,50,000 and interim maintenance of Rs.40,000 to the appellant as per the compromise made between them. Even

thereafter, the appellant did not come and live with the respondent and therefore, the respondent gave a complaint in the All Women Police Station on 09.07.2010. When they both were investigated, the appellant refused to come and live with the respondent in his native place at Kolnaickenpatti. Subsequently, the appellant gave a complaint before the Deputy Superintendent of Police, Mettur, stating that the respondent had harassed her demanding dowry. The All Women Police Station after the investigation found that it was false. Hence, they closed the said complaint. However the appellant again preferred a complaint before the Deputy Superintendent of Police, Mettur stating that on 22.08.2010, the respondent and his family members assaulted her and tried to kill her, but the said complaint was also closed by the Deputy Superintendent of Police, Mettur as the appellant herself later admitted that it is a false one.

5. Denying the averments made in HMOP.No.166 of 2010, the appellant herein filed a counter affidavit stating that it is true that the marriage between herself and the respondent was solemnized on 19.08.1998, but the other allegations made in the petition are false. The respondent got second marriage with one Govindammal in Jalakandapuram temple and the same was registered on 05.05.2004 in Jalakandapuram Sub Registrar Office, but suppressing the same, the respondent filed HMOP.No.93 of 2005 against the appellant seeking divorce. Further, it has been stated that the appellant filed HMOP.No.68 of 2005 against the respondent seeking restitution of conjugal rights. The respondent at the instigation of his family members driven out the appellant from the matrimonial home. The petition filed by the respondent seeking divorce was dismissed after full trial, and aggrieved over the same, the respondent has not preferred any appeal. Hence, the said petition is barred by Res Judicata. The petition filed by the appellant in HMOP.No.68 of 2005 was allowed after full trial and against which, the respondent has not preferred any appeal. Hence, he is not entitled to seek divorce, and sought for dismissal of the said petition.

6. The learned Sub Judge, Mettur, after considering the pleadings, oral and documentary evidence dismissed the H.M.O.P.No.166 of 2010 filed by the respondent and therefore, the respondent preferred an appeal before the Learned Principal District Judge, Salem in C.M.A.No.23 of 2013. The same was allowed on 12.02.2015. Hence, aggrieved by the same, the appellant has preferred this appeal before this Court on the following substantial questions of law :

a) Whether in law the genuine complaint of the wife/appellant herein for the husband's commission of offences of bigamy and also of her miscarriage which

happened because of physical assault by her husband would constitute any cruelty for granting decree for divorce and as such the adverse findings of the learned appellatant judge is not perverse?

b) Whether in law the present HMOP filed by the husband/respondent herein is not hit by the principles of resjudicata in view of the dismissal of earlier HMOP.No.152 of 2009 which also had been filed for divorce?

c) When the husband/respondent herein has miserably failed to prove his allegation of cruelty and desertion whether in law the Learned Appellate Judge is justified in granting decree for divorce?

7. Heard the learned counsel for the appellatant and the learned counsel for the respondent, and perused the materials available on record.

8. On perusal of the order dated 12.02.2015 made in C.M.A.No.23 of 2013 on the file of the Principal District Judge, Salem, it is observed that the appellatant had married the respondent on 19.08.1998 and after the marriage, she lived with the respondent only for 21 days and thereafter, without getting any permission from the respondent had gone to her parents' home at Kolathur and had lived with their parents for about one and half years without any conduct of the respondent. Thereafter, in February 2000, only the respondent had given a complaint in the Mettur Police Station to take steps for reunion and the appellatant had not taken any steps for reunion with the respondent. Further, it is observed that based on the complaint given by the respondent, both the appellatant and the respondent were advised for reunion and as per which, they lived together in a separate house near Mettur Chinnapark. But the appellatant within 15 days again left the matrimonial home and started to live with her parents at Kolathur.

9. It is also observed from the order of the Lower Appellate Court that on 07.06.2004, the appellatant had lodged a complaint in the All Women Police Station at Mettur to advise the respondent to live with her in a separate house and they also advised the respondent for the same, but in the meanwhile, the respondent had illegally remarried one Govindammal on 03.05.2004, and suppressing the same, the respondent had refused to come out from the joint family stating that he is the only son of his parents and he has to take care of them. Further, it is observed that even though the appellatant had filed a petition for restitution of conjugal rights in HMOP.No.68 of 2005, she has not chosen to come back to the matrimonial home and live

with the respondent, and further she has filed a Criminal complaint against the respondent, and based on which, the respondent was also arrested and later released on bail. Moreover, it is seen that after the dismissal of the divorce petition, the respondent has preferred an appeal, but the appellant has not preferred any appeal after the dismissal of the restitution petition.

10. It is further observed from the order of the Lower Appellate Court that the said Govindammal filed a petition in HMOP.No.152 of 2009 for dissolution of marriage solemnized between herself and the respondent and the same was also allowed. Subsequently, a compromise was arrived at between the appellant and the respondent, and as per which, the respondent has paid a sum of Rs.2,50,000/- to the appellant for her maintenance. Even after which, the appellant has not chosen to come and live with the respondent, and she again filed a complaint against the respondent on 13.07.2010 stating that the respondent had harassed her demanding dowry. Hence, In view of the above observations, it is categorically clear that from the date of marriage i.e. on 19.08.1998, there was lot of dispute between the appellant and the respondent, they are living separately for nearly 20 years and the appellant has initiated several proceedings against the respondent and the same has given mental agony to the respondent. In the absence of the appellant taking appropriate steps for reunion, the marriage has been irretrievably broken. As the respondent is also married an another lady, he was sent to jail, and all these proved that the appellant has not chosen to join and lead a peaceful life with the respondent. Hence, there is no possibility of reunion between them and this Court is not inclined to modify the order dated 12.02.2015 made in C.M.A.No.23 of 2013 on the file of the Principal District Judge, Salem.

11. Accordingly, this Civil Miscellaneous Second Appeal is dismissed and the substantial questions of law raised by the appellant are answered in favour of the respondent. No costs. Consequently, the connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Principal District Judge, Salem.
2. The Subordinate Judge, Mettur.
3. The Section Officer, VR Section, High Court, Madras.

C.M.S.A.No.16 of 2015
and
M.P.No.1 of 2015

SVI (CO)
SP(14/08/2020)



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