

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.S.A.No.9 of 2015

Sarathi

... Appellant

Vs.

Sudha

... Respondent

Civil Miscellaneous Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the Judgment and Decree dated 23.12.2014 made in C.M.A.No.3 of 2012 on the file of the Additional District Court, Dharmapuri, in reversing the Judgment and Decree dated 16.04.2012 made in H.M.O.P.No.81 of 2009 on the file of the Subordinate Court, Harur.

For Appellant : Mr.V.R.Annagandhi

For Respondent : Mr.M.Selvam

Judgment

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 23.12.2014 made in C.M.A.No.3 of 2012 on the file of the Additional District Court, Dharmapuri, in reversing the Judgment and Decree dated 16.04.2012 made in H.M.O.P.No.81 of 2009 on the file of the Subordinate Court, Harur.

2. The case of the appellant is that the marriage between the appellant and the respondent was solemnized on 24.10.2004 at Belur Eswaran Temple as per Hindu Rites and Customs, and after the marriage, the appellant and the respondent were lived together only for three years and no child was born to them. The respondent was working as a Teacher in a Private School and was earning Rs.3,000/- per month. She has given her salary to the appellant only for 9 months and thereafter she has not given. When the appellant questioned the same, she quarreled with him and therefore the appellant advised her. But she has not listened him and she often quarrelled with him without any reason. Thereafter, the appellant came to know that the respondent was often roaming with her sister's husband by spending her money blindly and therefore he questioned her. But she without listening his words left from the home stating that she doesn't like him and only her sister's husband is her life. Subsequently, she lodged a compliant against the appellant at Harur Police Station, and during the investigation at Harur

Police Station, the appellant has stated that he already handed over all the belongings of the respondent, and thereafter, both the appellant and the respondent signed and went away from the station stating that they settle their issues before the Court.

3. It is the further case of the appellant is that he was waiting for nearly 3 years believing that the respondent would come and live with him, but the respondent did not come, and therefore he went to the respondent's home and asked her to come home, but the respondent refused to come and further she has beaten the appellant along with her parents and caused injuries on him. Due to the said incident, the appellant was admitted in Government Hospital at Pappireddipatty and took treatment for two days, and thereafter he has filed a petition in HMOP.No.81 of 2009 before the Subordinate Court at Harur for dissolution of marriage solemnized on 24.10.2004 between himself and the respondent.

4. Denying the allegations of the appellant, the respondent has filed a counter affidavit stating that it is true that the marriage between herself and the appellant held on 24.10.2004, but the other allegations made against her are utter false. Actually what happened was, the appellant had illegal contact with his brother's wife. When the respondent questioned the same, the appellant, his parents, his brother and sister-in-law drove the respondent out from the house stating that her parents gave only 10 sovereigns of jewels and Rs.25,000/- as dowry and therefore she doesn't have any rights to question them. The appellant also filed a suit for partition in O.S.No.154 of 2009 on the file of the District Munsif-Cum-Judicial Magistrate Pappireddipatty, and sought for dismissal of the petition filed by the appellant/husband.

5. The Sub Court Judge, Harur, after considering the pleadings, oral and documentary evidence, allowed the HMOP in favour of the appellant. Aggrieved by the same, the respondent preferred an appeal before the Additional District Court, Dharmapuri in C.M.A.No.3 of 2012 and the same was allowed on 23.12.2014. Hence, the appellant has filed this appeal before this Court on the following substantial questions of law :

"a) Whether successive complaints given by the respondent against the Appellant/husband constitute mental cruelty entitling for a decree of divorce.

b) Whether failure to prove attribution of Adultery made by wife against husband constitutes mental cruelty.

c) Whether the Lower Appellate Court is correct

and legal to dismiss the Divorce petition on the ground that no document was filed to prove physical injury caused to appellant."

6. When the matter was taken up for hearing at the time admission on 08.04.2015, this Court referred the matter to the Tamil Nadu Mediation and Conciliation Centre, High Court, Madras, for amicable settlement. As per which, both the parties were appeared before the Mediation Centre on 20.07.2015 along with their counsels, but the matter was not settled. Hence, it has been sent back to this Court.

7. On perusal of the records, it is seen that the marriage between the appellant and the respondent was held on 24.10.2004, and after the marriage, they lived together only for one year and few months, and thereafter they got separated as there was some dispute between them and there was no child for them.

8. On perusal of the order of the Sub Court, Harur, it is observed that on 20.09.2009, the appellant went to the respondent's home and asked her to come home, but the respondent and her parents had beaten the appellant and caused injuries on him. In order to prove the same, the appellant has placed an evidence before the Sub Court Judge, and therefore, the Sub Court Judge has come to the conclusion that the cruelty has been committed only by the respondent. Further, the respondent has admitted that she had given a complaint against the appellant at All Women Police Station on 04.10.2009 and had received all her jewels and other belongings from the appellant, and therefore, the Sub Court Judge has come to the conclusion that the respondent was not interested to live with the appellant. Moreover, it is observed the respondent nearly for 3 years had not taken any steps for joint living and there was no contact between the parties, and therefore, the Sub Court Judge has come to the conclusion that there is no possibility for reunion between the appellant and the respondent and further granted divorce to the appellant. The Additional District Court Judge, Dharmapuri, without considering the above facts has erroneously reversed the said order and allowed the appeal filed by the respondent, and therefore the appellant has come before this Court.

9. However, when the matter is taken up today i.e. on 21.11.2019, the learned counsel appearing for the appellant would submit that the respondent has already remarried an another person, namely, Selvam, and he has also produced two photographs of the said marriage, aadhar card of the appellant and a copy of the Letter which was written by the appellant dated 22.01.2019. In the said letter, it has been stated that on 27.04.2018, the respondent has remarried one Selvam

S/o.Shanmugam, Malagapadi, Pethathampatti (PO), Pappireddipatti P.O, Dharmapuri District, and since the marriage photos of the appellant have been destroyed, the appellant has sent his Aadhar card and one of the photographs which he had for proving his identity.

10. In view of the above observations made by this Court and the submissions made by the learned counsel for the appellant, it is categorically clear that the respondent was never interested to live with the appellant, and in spite of his serious efforts for reunion, she stayed away from him and now remarried another person.

11. As the respondent/wife had remarried, there is absolutely no possibility of reunion and this Court is of the view that the marriage life between them has come to an end. Hence, this Court is inclined to interfere with the findings of the Judgment rendered by the Additional District Court, Dharmapuri.

12. Accordingly, the Judgment of the Additional District Court, Dharmapuri dated 23.12.2014 is set aside and the substantial questions of law raised by the appellant are answered in favour of him.

13. In the result, this Civil Miscellaneous Second Appeal is allowed. No costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

raja

To

1. The Presiding Officer,
Additional District Court, Dharmapuri,
2. The Presiding Officer,
Subordinate Court, Harur.

+lcc to Mr.V.R.Annagandhi, Advocate, S.R.No. 96959

C.M.S.A.No.9 of 2015

KS(CO)
GN(15/09/2020)