

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.6 OF 2012

AND

M.P.NO.1 OF 2012

Chandra

... Appellant/
Appellant/Respondent

Vs.

Rajendiran

... Respondent/
Respondent/Petitioner

Prayer :

Civil Miscellaneous Second Appeal is filed under Section 28 (1) of Hindu Marriage Act, 1955 to set aside the Judgment and Decree dated 29.10.2011 made in C.M.A.No.21 of 2010 on the file of the Additional District Judge, Fast Track Court No.II, Salem in confirming the decree and Judgment dated 15.07.2010 made in H.M.O.P.No.19 of 2007 on the file of Subordinate Court, Attur.

For Appellant : Mr.C.Prabakaran

For Respondent : Mr.L.Mouli

J U D G M E N T

The appellant/wife has filed the present Civil Miscellaneous Second Appeal to set aside the Judgment and Decree dated 29.10.2011 made in C.M.A.No.21 of 2010 on the file of the learned Additional District Judge, Fast Track Court No.II, Salem in confirming the decree and Judgment dated 15.07.2010 made in H.M.O.P.No.19 of 2007 on the file of Subordinate Court, Attur.

2. The case of the respondent/husband is that he married the appellant on 14.09.1988 and the respondent/husband was working as mason. The appellant/wife had insulted him stating that he has no better job and he is not earning more money and always used to visit and stay in her parents house and from January, 1994 she left permanently and resided there. The appellant/wife had given a complaint to the police stating that the respondent/husband attempted to murder her. The appellant/ wife

always used to scold the respondent in front of relatives and would speak that he is not fit to be a husband. Left with no other option, the respondent/husband had sold all the properties and started working in various other places other than their village. When the appellant/wife was staying at Thainampalayam village near Kuppam, she had given a complaint on 15.05.2003, as if the husband had tried to strangulate her, due to which the husband was arrested, he was beaten up by the police officials in jail and with regard to the same, a case in S.C.No.85 of 2006 is pending for enquiry in Mahila Court, Salem.

3. It is the further case of the respondent/husband that the brother of the appellant/wife had also tried to set fire to the house of the respondent/husband and the entire house was damaged. Therefore, he has given a complaint against the appellant/wife before Chinna Salem Police Station and a case has been registered and criminal proceedings were initiated before the court below at Kallakurichi. Since for the past 13 years, the appellant/wife was living separately and there is no possibilities to reunite and lead a happy married life as husband and wife, due to the aforesaid cruelty caused by the appellant, the respondent has filed a petition before the Sub Court, Attur under Section 13(1) (1A) & (1B) of Hindu Marriage Act, seeking to dissolve the marriage held between them.

4. In contrary, the appellant/wife had denied all the allegations stated by the respondent. Further, the appellant/wife had never informed to anyone that she did not like the respondent and the appellant never refused before panchayators to come and live with the respondent. The appellant also stated that it is duty of the respondent to take care of the child. Besides the above, as the appellant/wife did not give birth to a child for six years, her parents only gave treatment to her, thereafter she gave birth to a female child. She had also submitted that the husband had illicit intimacy and that is why he was unable to lead a happy life in their native place. Even after convening panchayat, respondent/husband is not ready to take her back and she prays for dismissing the said divorce petition filed by the husband.

5. Before the lower court, two witnesses were examined and four documents were marked on the side of the respondent and two witnesses were examined and no documents were marked on the side of the appellant. After considering the evidence, submissions and counter submissions, the lower court had dissolved the marriage held on 14.09.1988 between the appellant and the respondent.

6. Aggrieved by the said order, the appellant / wife had filed an appeal before the learned Additional District Judge,

[Fast Track Court No.II] Salem in C.M.A.No.21 of 2010 and she also filed I.A.No.794 of 2011 to mark the following documents as additional evidence.

'(i) Sale deed in favour of the respondent / husband dated 20.07.2001

(ii) Sale deed executed by the respondent / husband dated 10.03.004.

(iii) 2005-2009 Family Card of the appellant / wife.

(iv) Legal notice to the respondent issued by the appellant / wife and her daughter.

(v) Acknowledgment of the respondent dated 24.12.2010.

(vi) Plaint in POP No.1 of 2011 filed by the appellant and her daughter.'

7. Before the appellate court, the appellant / wife had submitted that the trial court had failed to consider her willingness to live with the respondent / husband. The husband alone is the person, who is responsible for dissolution of marriage and there is no dissolution on the part of the appellant / wife, only because the respondent / husband had illicit intimacy with one Shanthi, he had deserted the wife and that is the only reason seeking for dissolution and the trial court has not considered the same and has granted divorce, as pleaded by the respondent / husband. By referring various judgments, had pleaded to set aside the order passed by the court below.

8. In contrary, before the lower appellate court, the respondent / husband had submitted that the appellant / wife had filed many criminal case against him, due to which, he was also arrested and remanded to jail. Further, the brother of the appellant / wife had set fire to the house of the respondent and they had also made false allegation against the husband, as if he is having illicit intimacy with one Shanthi. In view of the above said allegation, which caused mental cruelty to the husband and since there is no chance of living together, he prayed to confirm the order passed by the court below.

9. After considering the materials available on record, the appellate court has dismissed the appeal filed by the appellant, against which, the appellant/wife is before this Court.

10. The learned counsel for the appellant submitted that the courts below could have afforded an opportunity to the parties to live peacefully at least for the rest of the life time by forgetting the bitter incident that took place earlier. Further, due to the grant of divorce, the entire life of the appellant has become futile and dark and the appellant is always ready and willing to live with the respondent, however, the courts below have not taken into account and proceeded to grant divorce. Moreover, the appellant has raised the following substantial questions of law for consideration:

'a. Whether the courts below are right in holding that the appellant / wife deserted the respondent / husband willfully which warranted for grant of divorce?

b. Whether the pendency of the criminal case between the each parties amounts to cruelty and based on which the decree of divorce can be granted?

c. Whether the pendency of the criminal case as the counter blast of the spouses would attract under Section 13(1)(i-a)(i-b) of the Hindu Marriage Act, 1955 and is sufficient reason for grant of divorce?

d. Whether the dismissal of an application filed under Order XLI Rule 27 of Code of Civil Procedure in the statutory appeal which is continuation of original proceedings without any specific finding and issue?'

11. Heard the learned counsel on either side and perused the documents placed on record.

12. It is seen from the materials available on record that the respondent / husband and the appellant / wife had got married in the year 1988 and they were living together for four years. Since the respondent / husband was working as mason and doing coolie work, the appellant / wife did not like the said avocation of the husband and she was always of the opinion that she is not able to lead a happy life, as per her status, due to the job of the respondent, hence she did not like her husband and started insulting him in front of relatives and public by using filthy language. Further, always, the appellant / wife was living in her parent's house, moreover, from her own admission, it is clear that for six years, they did not have a child.

13. It is also seen from the documents that from January 1994 onwards, the appellant / wife has been living separately and the appellant / wife inspite of repeated request made by Panchayatdars had not chosen to live with the respondent. The act of giving complaints by the appellant / wife against the

respondent/ husband had ended in convicting the respondent in jail for three months and separated them for thirteen years, i.e., from the year 1994 till the year 2007. That apart, when the respondent / husband filed a petition for divorce, the appellant and the respondent were living separately.

14. It is pertinent to note that on 15.06.2002, the respondent / husband has filed a FIR, wherein it is clear that the appellant / wife and her brother had attacked the respondent /husband and his brother. The wife's submission that she has a female child, was not supported by any evidence and when she herself had stated that she did not have a child, was taking treatment and then only, she gave a birth to a child, is not been accepted by the respondent / husband. Also that, from the year 1988, when the marriage is held, till the year 1994, they have been separated and no such evidence was produced to show that the child was born before the year 1994, however, the same need not be looked into.

15. Besides the above facts, it could be seen from the evidence that the respondent / husband was working as mason, he may not have a sufficient income, therefore, the appellant / wife could not lead a happy life. There was dispute between the respondent / husband and appellant / wife and her behaviour towards him shows her intention as to not to live with the respondent / husband, therefore, the appellant's family members had assaulted the respondent / husband and started quarreling with the husband by filing various complaints. The litigation between the respondent / husband and appellant / wife had let the appellant / wife to file a complaint before police station and the respondent / husband has been made an accused in S.C.No.85 of 2006, which ended in conviction and he was sent to jail for three months and that the appellant / wife acted in a manner, which has definitely caused cruelty to the husband and marriage has been irretrievably broken. Also, the allegation that the respondent / husband had an illicit intimacy with one lady was not proved by the appellant by letting in any evidence. It is to be noted that the appellant / wife had deserted the respondent / husband and the same has been proved by the respondent / husband before this Court.

16. In view of the above stated facts, both the courts below have come to the conclusion that the marriage between the respondent / husband and the appellant / wife had failed and there is no other way to resolve the issue, as they have been separated from the year 1994 till now, which is around 25 years, hence, this Court is of the considered view that the marriage has been irretrievably broken down and they cannot lead a happy married life hereafter. The substantial question of law raised by the appellant are answered accordingly.

This Court finds no reason to interfere with the Judgement and Decree dated 29.10.2011 made in C.M.A.No.21 of 2010 on the file of the Additional District Judge, Fast Track Court No.II, Salem in confirming the decree and Judgment dated 15.07.2010 made in H.M.O.P.No.19 of 2007 on the file of Subordinate Court, Attur and the present appeal stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The learned Additional District Judge,
Fast Track Court No.II, Salem
2. The learned Subordinate Court,
Attur.

Copy To

The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.99386

C.M.S.A.No. 6 of 2012
and
M.P.No.1 of 2012

RSK(CO)
CS/30/09/2020

सत्यमेव जयते

WEB COPY