

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.02.2019

Coram

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

C.M.A.No.2407 of 2016

S.Chinnasamy .. Appellant/Appellant

vs.

C.Dhanalakshmi .. Respondent/Respondent

Appeal filed under Section 19 of the Family Courts Act, 1984 against the fair and decretal order dated 16.10.2015 made in H.M.O.P.No.539 of 2010 on the file of the Principal Family Court, Coimbatore.

For Appellant : Mr.S.Mukundh

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

The husband, whose divorce petition was dismissed by the Family Court, is the appellant. Even at the time of filing the original petition, the appellant was 60 years old and the respondent was 45 years. Nearly 10 years have elapsed thereafter.

2.The Family Court declined to allow the petition on the ground that there is no sufficient material to hold that the respondent was indulging in cruelty. Similarly, on the ground of desertion also, it was held that there was no sufficient material. Challenging the same, the present appeal has been filed.

3.Learned counsel appearing for the appellant submits that the respondent was adamant and not living in harmony with the appellant. It is she who left the matrimonial home. Therefore, the order passed by the Court below would require interference.

4.We do not find any merit in this appeal. The Family Court rightly found that there are no sufficient grounds made out for granting divorce on the ground of cruelty or desertion. The appellant has not proved the contentions raised. A finding has been given that the respondent was ready and willing to rejoin the appellant. It is he who did not take her back. Further, he issued a legal notice seeking divorce. The mere complaint given against the appellant by itself cannot be a ground to substantiate cruelty.

5.The Family Court, after considering the evidence of P.Ws.1 and 2 as against R.Ws.1 and 2 has stated that the appellant has not proved the factum of cruelty. It is the appellant who driven the respondent away, apart from not providing any amount for maintenance. Thus, considering the above, a sum of Rs.3,500/- per month has been granted for maintenance.

6.In the light of the above said factual finding of the Family Court, we are not inclined to allow this appeal. As rightly observed by the Family Court, there is no substantial material to attract the provisions of cruelty and desertion.

7.In such view of the matter, we are not inclined to interfere with the order passed by the Family Court. Accordingly, the Civil Miscellaneous Appeal stands dismissed. No costs.

Sd/-

Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

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To

1. The Principal Family Court, Coimbatore.

2. The Section Officer,
VR Section, High Court, Madras

+1cc to M/s.Sarvabhauman Associates, Advocate SR.No.18721

C.M.A.No.2407 of 2016

CNR (CO)
GMY (15/10/2019)