

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.03.2019

CORAM

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

C.M.A.No.2554 of 2016

G.Jagan .. Appellant/Petitioner
vs.
M.Eswari ... Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal filed under Section 19 of Family Court Act 1984 to set aside the fair and decretal order dated 03.10.2016 made in F.C.O.P.No.10 of 2016 on the file of the Family Court, Chengalpet.

For Appellant : Mr.K.Govi Ganesan

For Respondent : Mr.Inamdar Ameenur Rahman

J U D G M E N T

(Judgment of the Court was delivered by C.SARAVANAN,J.)

The present appeal is directed against fair and decretal order dated 3.10.2016 in F.C.O.P.No. 10 of 2016 passed by the Family Court at Chengalpattu.

2. By the impugned order, the Family Court has dismissed the F.C.O.P.No.10 of 2016 filed by the appellant under Section 13 (1) (i-a) and (i-b) of the Hindu Marriage Act, 1955 for dissolving the marriage with the respondent- wife.

3. The marriage between the appellant and the respondent was solemnised on 23.8.2009 as per Hindu rites and customs.

4. It is stated that within three months of the marriage the appellant's father suffered heart attack and therefore the appellant was forced to look after the business carried on by his father. However, on account of lack of experience he sustained loss and the business had to be eventually closed down.

5. Under these circumstances, the appellant went in search of fresh employment in Chennai leaving the respondent with his parents where the couple had started their matrimonial journey.

6. The respondent's father appears to have prevailed upon the respondent to set up a separate matrimonial home in Chennai even though the appellant did not have the means to set up an independent matrimonial home at that time.

7. It is the case of the appellant that though the respondent's father is none other than the appellant's uncle had helped him out at that stage financially by getting him loan, yet instigated the respondent against the appellant.

8. It is further submitted that despite best of the efforts, the lorry which was hypothecated with the financiers by the appellant's father was seized.

9. It has been alleged that the in-laws of the appellant instigated the respondent-wife to demand a separate matrimonial home but the appellant was not ready to live away from his parents house to tide over the financial problem.

10. It has been alleged that despite request of the appellant and his father, the respondent failed to return to the matrimonial home. It was further submitted that the respondent's father threatened to present blank cheques given by the appellant for the loan/finance arranged by them and gave pressure on the appellant.

11. In the petition, the appellant has alleged that his father-in-law demanded interest at usurious rate and subjected him to mental cruelty.

12. Under these circumstances, the appellant has filed the above petition to dissolve the marriage solemnised between the appellant and the respondent.

13. In the proceeding before the family Court at Chengalpattu, the respondent filed a detailed counter denying the allegation. It has been alleged that despite repayment of loan by the respondent's father, the appellant did not pay back the amount to him.

14. The respondent has alleged that the appellant was cruel and used to physically assault her and demanded money.

15. It was further alleged that though the loan was arranged to help out the appellant to tide over the financial problem and on account of his inability to repay the same, yet the appellant found a soft target in the respondent and used to frequently physically assault her.

16. The respondent has further alleged that at the time of marriage, the respondent's parents had given a sum of Rs. 3,50,000/- as Sridhana apart from other household articles including a washing machine. It was further alleged that the appellant used to demand money from the respondent and kept the respondent in his parents house as a prisoner.

17. It was further alleged that the appellant's widowed sister who was alleged to be dependent on the appellant was well off and it is incorrect to state that the appellant was required to maintain them also after the death of her husband.

18. The respondent has also alleged that the appellant was uncomfortable with the respondent who was employed at that time in a private concern and used to often chide her for coming late from office.

19. The respondent has stated that the appellant did not mend his ways of being and was protected by his parents but submitted that she was ready and willing to live with the respondent in a separate matrimonial home.

20. It was further alleged that the appellant himself misbehaved on several occasions and had threatened to commit suicide in case the respondent failed to bring money from her parents and therefore the respondent was forced to leave the matrimonial home on 29.09.2011. The respondent had given a police complaint with a request to reunite them.

21. Rest of the allegations that the respondent's parents threatened the appellant and lodged a complaint with the police station were also denied.

22. It was further submitted that though the appellant had given an undertaking that he would take back the respondent, he failed to do so and therefore the respondent gave another complaint.

23. The Family Court found that from the pleadings there is no case made out for cruelty by the respondent on the appellant.

24. The Family Court has also found that the statements of the appellant during examination, and cross examination were contradictory to each other. The family Court has noted that during examination the appellant has stated that the appellant and respondent did not live with each other even a single day. However, during cross examination, the appellant admitted that they were living together for the first three months without any problem.

25. Similarly, the allegation of the appellant that the respondent along with her parents and 10 other persons came and threatened him at his house and insulted was not proved. During cross examination, the appellant offered no reply as to why he did not give any police complaint against the 10 persons.

26. The impugned order further states that this creates a doubt about appellant's statements. Similarly, in respect of Exhibit A-4 which is a FIR, it is stated that the respondent had made efforts for more than a year to live with the appellant and since her efforts failed, she filed a complaint before the police station only in an effort to re-start the matrimonial journey with the appellant.

27. Ex.P.5 dated 20.04.2016 is the order of the Mahila Court on the complaint of the respondent. The appellant however stated that he was not aware of the order. Similarly during cross examination when questioned as to when the respondent left him, he confirmed that the respondent left him on 29.09.2013.

28. Further, in his petition, the appellant herein did not provide any details as to how the respondent committed cruelty on him. Further, when questioned as to why he did not file any documents relating to the complaint made by him against the

respondent, he merely answered that he forgot.

29. The Family Court has noted that from the witness statement of the respondent, it can be seen that the respondent filed a police complaint for being reunited with her husband. However, she left the appellant's house on 29.9.2013 because of the alleged torture / cruelty on her. After, 2 months when she went back to her husband's house only to find that he had shifted his house without informing his address. Thus, she claimed in her statement that she could not find it after searching she went back to her parent's house. Therefore, the family Court found that the respondent made constant efforts to live with the appellant.

30. Heard the counsel for both sides and perused the documents available on records.

31. The appellant relied on the decision of this Court in K.Srinivas vs. K. Sunitha, 2014 (3) MWN (Civil) 671, wherein it was held that when a FIR is filed for dowry harassment against the husband and his family members after he files a divorce petition, the same can be treated as mental cruelty by the wife.

32. The Family Court has however opined that in this case the respondent had filed a complaint for being reunited with the appellant and hence not relevant.

33. Though the respondent is present through her counsel there was no serious contest to the appeal filed by the appellant. In this case, the appellant and the respondent have separated.

34. In the counter before the Family Court, the respondent has herself alleged that the appellant was cruel and used to physically assault her. However, there are also admissions from the respondent that she had given complaints before the police with a view to broker a peace with the respondent long after they were separated and that after the above petition was filed to dissolve the marriage her intention has to set up independent matrimonial home away from the appellant's husband. The parties have lived together sporadically and have been at loggerheads.

35. The respondent refused to come back to the appellant and after the petition for dissolving the marriage was filed.

The respondent had filed a case in C.C.No.32 of 2014 on the file of the Judicial Magistrate, Additional Mahila Court under section 498(A) and 406 of I.P.C which was dismissed. These acts of the respondent show that she was not interested in cementing the relationship. The respondent has also not filed a petition for restitution of conjugal rights.

36. The conduct of the respondent in initiating criminal complaint against the appellant which was ultimately dismissed shows that the respondent was not interested in giving a chance for the marriage to survive. Rather she did everything to break the marriage.

37. Instead of finding ways to work the marriage the respondent has pushed the marriage to the corridors of police station and to Court.

38. Even today, when the case was taken up for hearing no serious arguments have been advanced for contesting the present appeal. In view of the above we are of the opinion that the impugned order in view in the present appeal deserves to interfere with the order of the Family Court should be set aside.

39. We are therefore inclined to allow the appeal by setting aside the impugned fair and decretal order dated 3.10.2016 passed by the Family Court Chengalpattu and hereby pass a decree of divorce dissolving the marriage solemnised between the appellant and the respondent on 23.8.2009.

40. Accordingly, the civil miscellaneous appeal is allowed. No cost.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

kkd

To

1.The Judge
The Family Court,
Chengalpet.

2.The Section officer

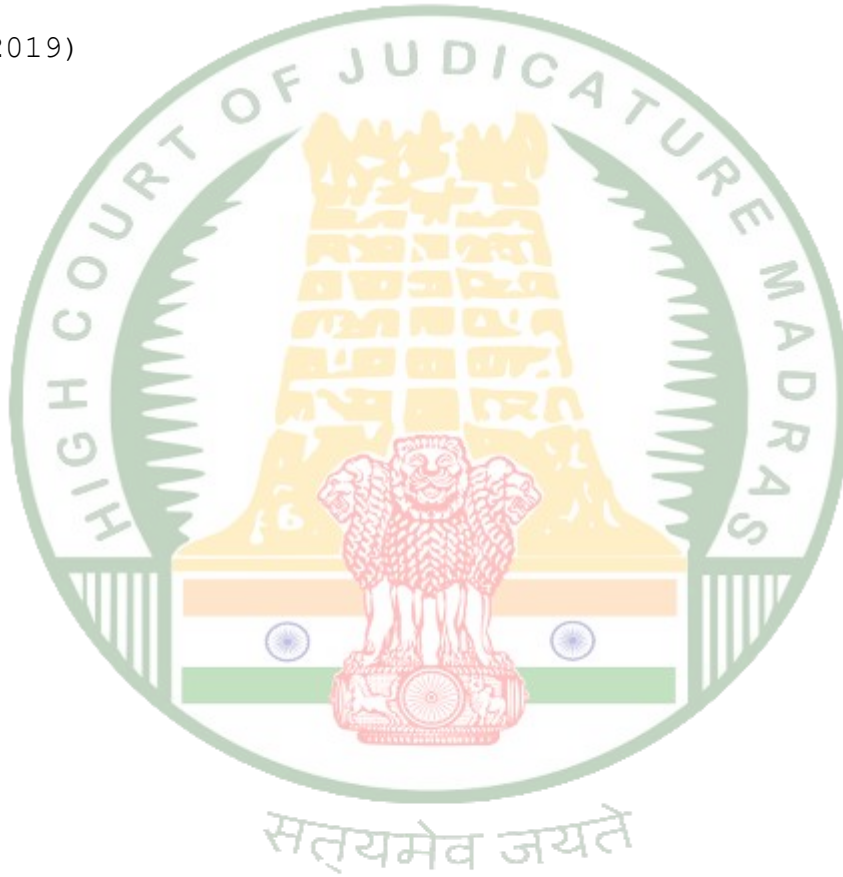
VR Section, High Court, Madras 104.

+1 CC to Mr.Inamdar Ameenur Rahman, Advocate sr 19719.

+1 CC to Mr.K.Govi Ganesan, Advocate sr 19567.

C.M.A.No.2554 of 2016

PVS (CO)
SP (03/06/2019)



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